The Impact of UEFA's Club Licensing & Financial Fair Play Regulations and their compatibility with EU law

José Pedro Correia Fernandes

Uminho | 2016

Universidade do Minho
Escola de Direito

José Pedro Correia Fernandes

The Impact of UEFA's Club Licensing & Financial Fair Play Regulations and their compatibility with EU law

April, 2016

Universidade do Minho
Escola de Direito

José Pedro Correia Fernandes

The Impact of UEFA's Club Licensing & Financial Fair Play Regulations and their compatibility with EU law

Dissertação de Mestrado
LL.M in European and Transglobal Business Law

Trabalho efetuado sob a orientação do
Professor Doutor Joaquim Manuel Freitas da Rocha

April, 2016

DECLARAÇÃO

Nome: José Pedro Correia Fernandes
Endereço eletrónico: jp_fernandes10@hotmail.com Telefone: 913337280
Bilhete de Identidade/Cartão de Cidadão: 13969461
Título da dissertação: The impact of UEFA's Club Licensing & Financial Fair Play Regulations and their compatability with EU law
Orientador: Professor Doutor Joaquim Manuel Freitas da Rocha
Ano de conclusão: 2016
LL.M in European and Transglobal Business Law

Universidade do Minho, _____/_____/_____

Assinatura:

Acknowledgments

Primarily, I would like to show my gratitude to Professor Joaquim Freitas da Rocha, for the availability, professionalism, rigor and commitment applied throughout the entire orientation process.

In addition, I would also like to thank, above all, my family and friends who directly or indirectly contributed for the realisation of this work and have always supported me, in several and difficult moments.

Mother, your unconditional support was particularly decisive for me, thank you very much.

My fellow LL.M colleagues Agbessi Neto, Ana Oliveira, Ana Novais, João Lages e Isabel Fidalgo and to the whole master's program a very special word of appreciation.

Ultimately, I would like to show my gratitude to Dr. Ana Marques, Dr. Narciso Rodrigues, Dr. João Lima Cluny, Dr. Gonçalo Cerejeira Namora and Dr. Julien Zylberstein. The data they kindly provided were very important in the development of this project and are gratefully acknowledged.

With this thesis, I close a remarkable journey of six years at the Universidade do Minho. Thank you all.

Abstract

My aim and purpose with this piece of research is to analyse the impact of recent 'Club Licensing and Financial Fair Play regulations' issued by UEFA, in the structure of European sporting bodies. These regulations administrate the level of expenditure of European football clubs and, therefore, this work examines the framework of those rules, with particular emphasis given to the controversial 'break-even' prerequisite. We will also examine the European standards on the subject and whether the UEFA's mechanism is compatible with the same. We will analyse the possibility that it comprises an anticompetitive agreement (art. 101 TFEU) and, in the event that it does, whether this is exempted and under what circumstances. Some related topics will also be addressed, such as the specificity of sport, the dissociation between pure sporting rules and economic rules, the alleged infringement of Articles 45 and 102 TFEU, as well as the problem of prohibition of the so-called third-party ownership of players.

KEYWORDS: club licensing; financial fair play; break-even; salary cap; European competition law

Resumo

O meu objetivo e propósito com esta dissertação é analisar o impacto das recentes regras de 'Licenciamento de Clubes e Fair Play Financeiro' implementas pela UEFA, na estrutura das entidades desportivas europeias. Estes regulamentos administram o nível de despesa dos clubes europeus de futebol e, por isso, este trabalho avalia o âmbito dessas regras, com particular ênfase dado ao controverso pré-requisito do 'break-even'. Serão também aferidas as normas europeias nesta matéria e se o mecanismo da UEFA é compatível com as mesmas, nomeadamente no que diz respeito à probabilidade de constituir um acordo anticoncorrencial (art. 101 TFEU) e, nesse caso, se este está isento e em que circunstâncias. Algumas temáticas adjacentes serão também abordadas, tais como a especificidade do desporto, a dissociação entre regras puramente desportivas e regras económicas, a alegada violação dos artigos 45 e 102 do TFEU, bem como o problema da proibição da partilha de títulos por terceiros.

PALAVRAS-CHAVE: licenciamento de clubes; fair play financeiro; break-even; tecto salarial; direito Europeu da concorrência

Table of Contents

Acknowledgments ..... *iii*

Abstract ..... *v*

Resumo ..... *vii*

Abbreviations ..... *XI*

Introduction *1*

Methodology *3*

Part I. Financial Fair Play Rules and UEFA 5

1. UEFA and the rationale behind Club Licensing and Financial Fair Play Regulations. *7*

2. The implementation of the mechanism *10*

3. The content of Club Licensing and Financial Fair Play Regulations *11*

3.1. Harmonisation attempt 14

4. The Club Licensing Procedure *15*

4.1. The Break-Even requirement 20

4.2. Relevant Income 21

4.2.1 The Financial Doping status quo of the clubs 23

4.3. Relevant Expenses 25

4.4. Related Party Transactions 28

Part II. The evolution of UEFA Club Licensing and Financial Fair Play Rules within European Union law 33

1. Sports Special Features *35*

1.1. European Union law and policy 38

1.2. European Union law and the dissociation between pure sporting rules and economic rules 42

2. CL&FFP potential legal challanges within EU law *44*

2.1. The problem with the salary cap 45

2.1.1 The main purpose of a ‘salary cap’ 49

2.2. A mention to the third-party ownership issue 50

3. CL&FFP legal dispute *56*

3.1. A potential legal fiction and the Brussels' Court Judgment 58
3.2. The European Commission: back on track? 61

4. Brief mention of Article 45 TFEU 63
5. Introduction to Article 101 TFEU 66
5.1. Establishing the Relevant Market 68
5.2. Does the implementation of the CL&FFP regulations by UEFA constitute a Decision, an Agreement of an Undertaking or an Association of Undertakings? 71
5.3. Will the trade between Member States be affected by CL&FFP regulations? 73
5.4. Do the CL&FFP object or effect pursue the restriction of competition? . 75
5.4.1 De minimis doctrine and CL&FFP regulations 77

Part III. General Conclusions and Outline od the Possible Justifications 81

1. Outline of the possible justifications 83
2. The Wouters exception 83
2.1 The legitimate objectives of CL&FFP regulations 85
2.2 The CL&FFP regulations *indispensable* restrictions 86
2.3 The *proportionality* of CL&FFP regulations 87
2.3.1 *Suitability* test 90
2.3.2 *Necessity* test 90
2.3.3 *Proportionality/(stricto sensu)* test 91

3. A closer look to Article 101(3) TFEU 93
3.1 *Efficiency Gains* 95
3.2 *Fair Share to Consumers* 96
3.3 *Indispensability test* 97
3.4 *No eliminatition of competition* 97

4. A mention of Article 102 TFEU 100
4.1 Application of both Articles 101 and 102 TFEU 103

5. Conclusions 105

References 107

Abbreviations

AG – Advocate General

BE – Break - Even

CAS – Court of Arbitration for Sport

CFCB – Club Financial Control Body

CIES – International Centre for Sports Studies

CJEU – Court of Justice of the European Union

CL – Club Licensing

EC – European Commission

ECA – European Club Association

EEC –Treaty establishing the European Economic Community

ENIC – English National Investment Company

EPFL – European Professional Football Leagues

EU – European Union

FFP – Financial Fair Play

FIFA – International Federation of Association Football

FIFPro – Fédération Internationale des Associations de Footballeurs

ISLJ – International Sports Law Journal

LC – Lugano Convention

MLB – Major League Baseball

NBA – National Basketball Association

NFL – National Football League

NHL – National Hockey League

PFSC – Professional Football Strategy Council

RSTP – Regulations on the Status and Transfer of Players

SSNIP – Small but Significant and Non-transitory Increase in Price

TFEU – Treaty on the Functioning of the European Union

UEFA – Union des Associations Européennes de Football

Introduction

It is a fact that, nowadays, European football is a big-money industry and that clubs are, more than ever, compared with profit seeking organisations. As a consequence of the clubs' relentless pursuit of sporting success, which has been reflected in their finances, the majority of them are reporting excessive losses year after year or relying on their owners to cover their expenses by injecting equity in the club. In 2011, 38% of European clubs reported negative equity, while 15% per cent of them struggled with solvency issues during the same year.[1] This scenario points to out the serious financial difficulties that European clubs are facing[2], with potential bankruptcies still being considered within the UEFA football industry (he Scottish team Glasgow Rangers is an example).[3] Due to the aforementioned reasons, the Union of European Football Associations decided to create a new legal instrument, the Financial Fair Play Regulations, in order to introduce some financial rationality into European football and to prevent clubs from carrying out with financial doping practices.

The preexisting UEFA club licensing system is now updated, combining the previous rules with the FFP provisions, which stipulate that a club must not spend more than it earns. The new instrument, UEFA's Financial Fair Play Regulations and Licensing System now sets out the financial requirements that a club must comply in order to get access into UEFA's competitions. The core provision of the FFP regulations' (updated version 2015) is the so-called 'break-even' requirement - which I will analyse in this piece of research – that obliges, concisely, clubs not to spend beyond their means, not living above their possibilities. At first glance, one may say that these new rules introduced by UEFA may appear to be a mere quality standard. Yet, the provision highlighted above – break-even requirement – constitutes a sort of 'salary cap in the sense that it limits the amount that a club is able to spend on a players' salary.[4]

This creates some serious problems since this salary cap mechanism constitutes, only *per se*, a restriction of competition. For this reason, we must assess whether this restriction

---

[1] The European Club Licensing Benchmarking Report Financial Year 2011, p.105.

[2] Morrow, S., 2013. Football club financial reporting: *"Time for a new model?" Sport, Business and Management: An International Journal*, 3(4), pp.297–311.

[3] Graham Spiers, *"How the mighty Glasgow Rangers have fallen"* (January 18, 2015), The Guardian, available at: http://www.theguardian.com/football/2015/jan/18/how-the-mighty-glasgow-rangers-have-fallen.

[4] Flanagan, C.A. et al., 2013. *"A tricky European fixture: an assessment of UEFA's Financial Fair Play regulations and their compatibility with EU law",* The International Sports Law Journal, 13(3), pp.137–148.

issued by UEFA violate, or not, the competition law of the European Union. This research aims to answer exactly those questions raised around possible violations by UEFA's regulations on the Treaty on the functioning of the European Union based on competition law grounds.

Although the European Commission and the UEFA issued a joint statement on the matter, that was not enough to silence the most critical opinions. Recently, it was questioned whether a court – notably the Court of Justice of the European Union (hereinafter CJEU) might strike it down and a complaint was filed.[5] Perhaps, for that very reason, since 2015, UEFA decided how to perfect or 'soften' the rules of FFP so that clubs can attract more sustainable investment while they are controlling overspending.[6]

In addition, some voices also raise the question of whether the FFP regulations breach European Union (hereinafter EU) law regarding the free movement of workers, in the sense that if a measure related to employment in professional sports within the EU block or discourage individuals from looking for another job in a different Member State, disregarding their nationality is in risk of violating article 48º of TFEU.[7] My work will also consider and reflect about this legal issue.

One should note that it is in the interest of all clubs in general is to take part in UEFA's competitions, since the income that arises with them are one of the major sources of getting profits, throughout match day revenue, broadcasting revenue and commercial revenue (including merchandising)[8]. That is why CL&FFP rules are so important for them.

---

[5] Andrew Smith, *"Financial Fair Play and the Striani Complaint: Where are we now?"*, Law In Sports, (17 Feb. 2015) retrieved from: http://www.lawinsport.com/articles/item/financial-fair-play-and-the-striani-complaint-where-are-we-now.

[6] Matt Slater, *"Michel Platini: UEFA to 'ease' financial fair play rules"* , BBC Sport, Football (18 May 2015), electronic available at: http://www.bbc.com/sport/football/32784375.

[7] Case C-415/93, URBSFA v. Bosman, 1995 E.C.R. I-4921, §96; Case C-325/08, Olympique Lyonnaise v. Bernard & Newcastle Utd., judgement of 16 March 2010, §34.

[8] Hampus Rikardsson & Linus Rikardsson (2013), "*Strategic Management in Football – How the European top club could adjust to UEFA financial fair play and simultaneously create conditions for competitive advantage within the changing UEFA football industry",* Linköping University, Department of Management and Engineering, Business Administration, p.41.

Methodology

A presentation of the CL&FFP regulations and the measures enshrined by UEFA will build the legal foundation of this master's thesis research. The main purpose of the investigation is to scrutinise whether CL&FFP has an anti-competitive effect on the European football market regarding EU legislation. In order to achieve that, the legal-doctrinal method will be the most appropriate one to be used. The legal doctrine reproduces the normative complexity of the law. It proposes highly detailed and sophisticated evidence approaching how to deal with diverging arguments.[9]

Specifically, it will address the main provisions enshrined in Article 101 (rules applying to undertakings) and 102 (abuse of dominant position) of the Treaty on the Functioning of the European Union and whether the FFP mechanism is in violation of it, by constituting an anticompetitive behaviour. Looking at the FFP consequences for clubs, players and different stakeholders with the EU regulations will constitute the basis for the legal analysis, highlighting the sports exceptions in the Commission's White Paper on Sports, introduced by the Lisbon Treaty. Some case law and principles derived from these will be important tools that will help understand some relevant issues in this research. Cases such as Meca-Medina, Höfner, Dòna, Enic, Deliège, Associacion Téchnique Minière, Bosman, Piau, Viho and others have an important role in developing sports legislations with EU law.

One of the most interesting points of this regulation is that it falls within the context of the sports universe and a pro-European and international dimension of sport. However, UEFA claims that sport and in particular football in this case does not function as said in "normal" businesses and that, therefore, should not be governed by European rules but by it, given the specific sport status and its special features. The European Commission also already intruded into the matter. For this reason or not, the fact is that the CJEU has already ruled several times in relation to exceptions and special status conferred on the UEFA. These materials will be an interesting starting point for reaching our response, regarding the impact of CL&FFP regulations in European football clubs and their compatibility with European Union law.

[9] Smits, J.M., 2015. *"What is legal doctrine? On the Aims and Methods of Legal-Dogmatic Research",* Maastricht European Private Law Institute, Working paper nº 2015/06, p.16.

Part I. Financial Fair Play Rules and UEFA

1. UEFA and the rationale behind Club Licensing and Financial Fair Play Regulations

The Union of European Football Associations - UEFA - is the governing body of European football. It is an association of associations, a representative democracy[10], and it is the umbrella organisation for 54 national football associations across Europe and one of the six continental federations of world football's governing body – FIFA.[11] Promoting the game and solidifying football's status as the most popular sport in the world is perceived as its major imperative.[12] It is an association entered in the register of companies under the Swiss common code, and is unbiased, politically and religiously. Its head office is situated in Nyon, Switzerland. It is a confederation of the upper world football governing body FIFA, which has its headquarters in Zurich, Switzerland.

The organs through which UEFA operates are the UEFA Congress, the UEFA Executive Committee, the UEFA President and the organs for the administration of justice. The UEFA Congress is UEFA's preeminent controlling organ. An Ordinary UEFA Congress is held each year, and is presented by delegates of UEFA's 54-member national associations. An extraordinary UEFA Congress might be met by the UEFA Executive Committee, or upon request of one fifth or more of the UEFA member associations, expressing the subjects to be addressed on the motivation. The Congress is subject to external auditors, an Auditing Body that shall be an auditing company, which is independent of UEFA, to fiscalize its accounts and to submit reports to the Congress.[13]

The UEFA Executive Committee is UEFA's 'supreme executive body' and has total command in areas not attributed to the legal or statutory jurisdiction of the UEFA Congress.[14] The Executive Committee is also subject of evaluation, pursued by the governance and

---

[10] Each Member Association shall have one vote and a member Association may be represented at the Congress by a maximum of three delegates, as set in article 12º of Rules of Procedure of the UEFA Congress in UEFA Statutes, *"Rules of Procedure of the UEFA Congress Regulations governing the Implementation of the UEFA Statutes",* (2014 Edition).

[11] *About UEFA,* UEFA.COM, http://www.uefa.org/about-uefa/index.html (last updated July. 3, 2014).

[12] UEFA, European football's governing body, UEFA.com, available at: http://www.uefa.org./about-uefa/history/index.html (last updated July. 15, 2015).

[13] *See* Article 46º of the UEFA Statutes, *"Rules of Procedure of the UEFA Congress Regulations governing the Implementation of the UEFA Statutes",* (Edition 2014).

[14] UEFA*, Executive Comitte,* UEFA.COM, http://www.uefa.com/uefa/aboutuefa/executive-committee/index.html (last updated Feb. 2, 2016).

compliance auditors.[15] The UEFA President forms it aside with 15 different members elected by a UEFA Congress (the President is elected for a four-year term by the UEFA member associations at the UEFA Congress, and periodically counsels with the UEFA Executive Committee). He is also responsible for presiding at the UEFA Congress as well as in the UEFA Executive Committee's meetings. In the case of a tie in any vote, the UEFA President casts a tiebreaking vote.

The Organs for the Administration of Justice act as UEFA's disciplinary bodies, namely the Control, Ethics and Disciplinary Body and the Appeals Body; Ethics and Disciplinary Inspectors and the two-chamber Club Financial Control Body. The Court of Arbitration for Sport (CAS), based in Lausanne, Switzerland, may also deal with disputes between UEFA and associations, leagues, clubs, players and officials, or disputes with a European dimension among the different stakeholders within this industry. The organisation of the administration of football is based on a pyramid system of regulations, with FIFA being the world governing body, UEFA the European governing body and national football associations the governing bodies at domestic level. The CAS shall have exclusive jurisdiction, to the exclusion of any ordinary court or any other court of arbitration, to deal with disputes in its capacity as an ordinary court of arbitration.[16]

Despite this entire apparent democratic framework, the European Commission itself argued, in the Helsinki report published in 1999, that the pyramid structure of sports organizations in Europe gave almost an authentic monopoly to sports institutions. It is feared that the existence of different federations in the same sport could run the risk of causing further conflict.[17]

This research is also motivated by a concern that the structure of the football pyramid[18], and its consequent allocation of monopoly power to the sports federations, goes beyond what is required for the good dealing of European sport (especially football). A substantial degree of the monopoly power enjoyed by sports federations has profound trade implications, and it

---

[15] *See*, supra note 13, at Article 45º of the UEFA Statutes (Edition 2014) which states in its nº1 that*: "the governance and compliance auditors shall periodically examine UEFA's activities in terms of good governance, compliance and risk management. The Executive Committee shall issue corresponding regulations.",* p. 20.

[16] *See,* supra note 13, at Article 61º - 63º, *"Disputes of European Dimension",* p. 26.

[17] *Cf.* S. Weatherill, European Sports Law, chapter 7, ASSER International Sports Law Series, Collected Papers, 2nd Edition Springer, pp. 282-292, (2013). This article was first published in *"The Helsinki Report on Sport"*, EL Rev 25, pp. 3-7. (2000B*).*

[18] *Cf.* S. Weatherill, European Sports Law, Chapter 12 *"Is the Pyramid Compatible with EC Law?"* chapter 12, ASSER International Sports Law Series, Collected Papers, 2nd Edition Springer, p, 296 (2013).

is claimed that the structure of the current composition pyramid is unsatisfactory to allow for proper representation and participation of all affected interests.

Concerning the administration for justice, increasing litigation is waiting, and its potential impact is devaluated. In particular, this paper aims to emphasize the idea in favour of allowing a more direct participation in some decision-making aspects performed by the top clubs, which is only allowed by the pyramid structure. European competition law is recognised as a device to complete a restructuring of organizing the game. Some authors may consider UEFA's FFP regulations as being a foe of competition, and some may not. Nonetheless, it is the purpose of this research to discuss a scenario favourable to an introduction of European competition law to European football and to all sports in general, to determine how the rules of the game should operate under a solid framework, in order to guarantee more honest and equitable competitions.

After these introductory considerations, it must now be understood the reasons that led UEFA to adopt the financial fair play measures that we know today. Much of what is the financial behaviour of clubs may be related to the acquisition system of players and paying salaries, which may be assigned in three different manners by the clubs. Firstly, by their own youth development system (football academy), with various levels of teams spread by different group ages, to help the younger players evolve.[19] It is expected that one day in the future those players can be part of the first team of the club.[20] The second manner of acquiring new players results when multiple teams compete to sign the same international player[21], by purchasing them with one club paying the other a transfer fee in exchange for the player.[22] Last but not least, the third way of acquiring players is signing a new contract with them once their contracts with their previous club have ended.

This latter method of contracting players had its origin in a paradigmatic case of the CJEU, in 1995, the *Bosman* Case. It should be noted that, until then, the players whose contract had already expired required the payment of a transfer fee for the buyer club to the

---

[19] Blair Downey, *"The Bosman Ruling: European Soccer – Above the Law?"* 1 ASPER Rev. Int'L BUS. & Trade L.187, 189 (2001).

[20] Rob Draper, "*A league of their own: inside FC Barcelona's football academy, churning out future Messis...for free",* Daily Mail, electronic available at: www.dailymail.co.uk/home/moslive/article-1265747/Inside-FC-Barcelonas-football-academy-churning-future-Messis--free.html, (17 April 2010).

[21] Matthew Piehl, (2010). *"Double Play: How Major League Baseball Can Fix the Amateur Draft and International Player Acquisition with One Swing",* Willamette Sports Law Journal, p. 15.

[22] Rick J. Lopez, Comment, *"Signing Bonus Skimming and a Premature Call for a Global Draft in Major League Baseball",* 41 ARIZ. ST. L.J. 349, 353, 374 (2009).

previous club in which the player had performed so far. Jean-Marc Bosman, a Belgian football player, managed to prove that this transfer fee paid by a club to another to hire a player, when this contract has already expired player, violated the TFEU provisions on the free movement of workers requirements.[23]

After this landmark decision, all European nationals whose contracts expired were free to decide their future and keep up agreements with other clubswithout needing authorization from their former clubs.[24] Considering the agency system and the astronomic transfer fees and salaries along with to the incapacity or disinterest of some sports agents in solving the problem, it is simple to understand why many clubs are facing serious financial problems during the past few years.

2. The implementation of the mechanism

Being aware of the financial issues of the great majority of European football clubs, the committee made use of its authority and decided to implement in 2003, the Club Licensing Regulations with the target of fixing minimum standards that 'would apply to all clubs, across the entire UEFA associations, disregarding their size and degree of professionalism'.[25] In a nutshell, these provisions specify that UEFA will grant an authorization of participation, vis-à-vis a license to compete, for those teams who are interested in engaging in UEFA competitions, if they comply with certain minimum standards.[26]

Nevertheless, despite the creation of this mechanism, the problems seem to persist, with clubs struggling every day to honour their liabilities on time, which made this a major priority concern to an active and competent UEFA. In September 2009, Karl-Heinz Rummenigge, the chairman of the European Club Association, announced that it was working in close collaboration with UEFA and developing concrete measures aimed at tackling overspending by the majority of clubs, through their regular contacts at the Professional Football Strategy Council.[27] Accordingly, in 2010, the FFP legal provisions were approved by

[23] Case C-415/93, URBSFA v. Bosman, supra note 7, §99.

[24] See Downey, supra note 11, at 189, 190.

[25] UEFA Club Licensing Report, "*Here to Stay",* p.4, (2004-2008).

[26] UEFA, Club Licensing and Financial Fair Play Regulations (2015) at Article 1(2)(c): *"the minimum sporting, infrastructure, personnel and administrative, legal and financial criteria to be fulfilled by a club in order to be granted a licence by a UEFA member association as part of the admission procedure to enter the UEFA club competitions (chapter 3)".*

[27] Karl-Heinz Rummenigge, EU Conference in Licensing Systems for Competitions, Introductory Speeches, Brussels (17 and 18 September 2009).

UEFA in order to consolidate and reinforce the financial requirements demanded in the licensing proceedings and in which the first assessments were launched in 2011[28], and it was already known that doing so would be complex. It will demand a creative and careful reasoning allied with a certain degree of sacrifice in the short-term. On one hand, clubs need to understand that they must correct, modify and improve their excesses of the last few years.

On the other hand changes in clubs' performance by itself will not guide to financial stability. Changes must take place at all levels and should include all stakeholders within the game - not just the clubs. Therefore, it is urgent for players and their representatives to look at their own circumstances and try to perceive how they might lower wage demands, which constitutes a major cause of the many financial difficulties that have been performed by clubs.[29]

In addition, it is worth stating the degree to which sports laws for the most indebted clubs are lax. As stated Simon Kuper and Stefan Szymanski, 'when clubs get into trouble, they generally 'do a Leeds: they cut their wages, get relegated and compete at a lower level. Imagine if other businesses could do this'.[30]

The truth, however, is that some protectionism has allowed clubs to remain afloat. Obviously, these are the clubs with the most fans, with more titles and which therefore have a greater ability to withstand the high levels of debt that bother them. Yet, this happens due to the clubs' belief that they are practically immortal. They continue to pursue this behaviour because they know by own experience that they can accumulate several losses and hold on.[31]

3. The content of Club Licensing and Financial Fair Play Regulations

As stated above, what made the Union of European Football Associations to impose the FFP regulations, were the concerns regarding the financial health of European football clubs. It is therefore no surprise that the objectives of the legal measures imposed by this new instrument targets the excessive level of expenditure that has been performed by the clubs.

---

[28] Financial Fair Play: "*all you need to know",* (30 June 2015) available at: http://www.uefa.com/community/news/newsid=2064391.html, last upadated 30 June 2015.

[29] *See* Karl-Heinz, supra note 19.

[30] Simon Kuiper & Stefan Szimansky, *"Soccernomics",* Harper Sport, (2012), p. 89.

[31] *Id.*

Actually, article two of the provisions define the aims of FFP,[32] with additional goals being included through the UEFA official website, which adds that the financial fair play concept was approved in order 'to decrease pressure on salaries and transfer fees and limit inflationary effect; to encourage long-term investments in the youth sector and infrastructure'.[33]

To sum up, we can describe these goals as aiming to ensure the financial health of clubs and halting financial doping measures practiced by a large number of agents that make up the professional football industry. It is expected that clubs can replace their financial policy and adopt a new strategy towards a widely held sustainable development, seeking long term agreements that besides being based on sporting success are also branded by sustainable financial health, instead of short-term strategies distinguished by several and repeated losses, huge risk and moral hazard.

As it is commonly known, UEFA laid the foundations of clubs tournament. More specifically, it is responsible for organising four club competitions - namely the UEFA Champions League, UEFA Europa League, UEFA Super Cup, and, more recently, the UEFA Youth League.[34] Without exception, all of these European competitions represent the most reputable and profitable events in which a club can take part. Notably, the UEFA Champions League is arguably the most prestigious club competition within the entire football industry, along with other major sport events.[35]

More than 1.03 billion euros in winnings were allocated amidst the top European football clubs in the ultimate Champions League edition, season 2014-2015. Crushed finalists Juventus earned the most earnings of the competition, pocketing a sum of 89.1 million euros. Surprisingly, the last winning team, Barcelona, collected smaller amounts that earned by Juventus, its rival at the Berlin final, last year, in Germany - the Catalan team garnered around 61 million euros with its participation in the competition.

---

[32] UEFA, "Club Licensing and Financial Fair Play Regulations" (2015) at Article 2(2) states that: 'to improve the economic and financial capability of the clubs, increasing their transparency and credibility; to place the necessary importance on the protection of creditors and to ensure that clubs settle their liabilities with employees, social/tax authorities and other clubs punctually; to introduce more discipline and rationality in club football finances; to encourage clubs to operate on the basis of their own revenues; to encourage responsible spending for the long-term benefit of football; to protect the long-term viability and sustainability of European club football'.

[33] UEFA, Financial Fair Play, electronic available at: http://www.uefa.org/protecting-the-game/club-licensing-and-financial-fair-play/index.html (last updated 1, July, 2015).

[34] *See,* UEFA*, Uefa Competitions,* electronic available at: http://www.uefa.org/documentlibrary/competitions/, (last visited 19, Feb, 2016).

[35] *See,* Monte Burke, *"The Richest sporting events in the world"*, Forbes, The Litlle Book of Billionaire Secrets, *"How to turn $20k into $20 million in 12 years or $1,2m in 30 years*", electronic available at: http://www.forbes.com/pictures/mme45efhm/uefa-champions-league/, (last visited 19, Feb, 2016).

The most noteworthy winning among the English squads was Manchester City (€45.85m), trailed by Chelsea (€39.23m), Arsenal (€36.38m) and Liverpool (€33.59m). An aggregate of €42m circulated among the 20 teams included in the play-offs and in early stages of the competition, the rest being distributed to the 32 associations included from the group stage onwards. Each team is entitled to a minimum of €12m just by participating in the group stage - with the group stage valued at €1m per win and €500.000 per draw. There was extra prize money of €5.5m for entering into the last 16, €6m for achieving the quarterfinals and €7m for achieving the semi-finals. The final winners get €15m while runners-up receive €10.5m.[36]

Notwithstanding this prize cash, groups were likewise honoured with broadcasting revenue commonly known as TV cash.[37] The sum given to every club relied on the corresponding estimation of national TV market and, additionally, on the quantity of clubs from that country in the competition. The capability of generating broadcasting revenue may vary across European football since the signing of new broadcasting contracts differs from league to league.[38]

Italy's TV business sector is a huge part of the general scheme. However, there were just two Italian teams in the group stages, and consequently Juventus had to share that cash with Roma, thereby leaving the competition with the most cash. Meanwhile, Barcelona needed to share its broadcasting revenue channels between Real Madrid, Atletico Madrid and Athletic Bilbao. Likewise UEFA distributed €2.9m among 19 national affiliations whose members contended in last season's competition.[39]

An increase in the Champions League prize money capital for the next three-year cycle 2015-18 was also announced. The difference is significant, with a 50% increase in the "Participation Bonus" which is guaranteed for all 32 teams. The previous amount shared between every team that qualifies for the group stages of champions league will now jump to €12m starting from 2015-16 season.[40]

---

[36] *Cf.* UEFA, *"UEFA Champion League revenue distribution",* retrieved from: http://www.uefa.com/uefachampionsleague/news/newsid=1858497.html, (last updated, 31 May 2015).

[37] Deloitte Report, Top of the table, "*Football Money League*", 2016, Sports Business Group, p.24.

[38] *See,* supra note 6, 5.1.1.2, *"broadcasting revenue",* p. 19.

[39] Hamish Mackay, "The Mirror", "*Champions League Prize money 2014/15 – see how much your club earned last season",* electronic available at: http://www.mirror.co.uk/sport/football/news/champions-league-prize-money-201415-6680392, (last updated, 22 Oct. 2015).

[40] Totalsportek2, *"UEFA Champions League Prize Money 2016 Breakdown",* electronic available available at: http://www.totalsportek.com/money/uefa-champions-league-prize-money/ (27, Jan, 2016).

Consequently, with this amount of money involved, it is simple to conceive why any European club will intend to conform to the regulations. At least, those that have the opportunity to qualify for these tournaments through their accomplishments in the domestic competitions, at a national level. Actually, in season 2011/2012, 591 of the 730 top-division clubs experienced the licensing procedure, which relates on a sum of 81% of every single top club.[41]

3.1. Harmonisation attempt

Choosing not to apply for a club license and just competing in their respective domestic league may not be a generous option. Those clubs that were not keen on applying for the licensing procedure, and therefore avoid the assessment of their financial situation by the UEFA Supervisory Authority – the Club Financial Control Body – did not fully escape from the new legal framework. It must be pointed out that all domestic leagues of each European country also have legal provisions to license their own competitions and these are, as a rule, moulded by the previous criteria settled by UEFA namely Annex III regarding the Integration of part II of these regulations into national club licensing regulations and Annex II concerning the provisions of delegation of licensing and monitoring responsibilities to an affiliated league.

We have witnessed an example of this after the conduct adopted by the English football clubs with both Barclays Premier League and the lower football divisions in introducing a similar version, underpinned by FFP legal framework.[42] They have sporting sanctions that can be invoked should the financial affairs of a club have been mismanaged resulting in an insolvency event, they have rules enabling the League to settle any overdue club debts to other clubs including non-Premier League clubs and they operate a Fit and Proper Person Test for company directors and shareholders that goes above and beyond UK Company Law. They also have a requirement for clubs to disclose material payments to the English Football Association.

---

[41] Communications, "Finanical Fair Play Media Information" (25 Jan 2012).

[42] Khan, J., 2009. *"EU Conference on Licensing Systems for Club Competitions"*, Draft Presentation, representing English football clubs. The author recognises that 'since the introduction of UEFA licensing for European Club competitions we have implemented licensing rules for European competitions and more recently we introduced the same financial criteria to our own competition rules. We therefore find the Premier League fully aligned to current UEFA Licensing philosophy but we have arrived at this juncture through actively canvassing the positive benefits of licensing in terms of financial stability and public accountability to our Clubs', pp. 4-5).

4. The Club Licensing Procedure

As before mentioned, the next considerations assess legal provisions that will only apply to European competitions, forcing national leagues to establish their own means of supervision and to regulate the obligations of the clubs, in order to enable them to obtain the necessary licencing to compete. It is pursued through this regulatory instrument, in the words of FIFA itself, that sports competitions are safeguarded, increasing the professionalism level of the game as well as promoting financial transparency of sporting bodies, by stopping financial doping behaviours of wealthy owners and managers.[43]

These principles should be, according to the FIFA Licensing Regulations, transposed to the FIFA's confederations (UEFA, CONCACAF, CAF, CONMBOL, for example), to be implemented on the scale of continents. Each national Federation that composes the Confederations should strive for the best measures in order to attain its intended purposes. With this being said, it should be noted that one of the biggest obstacles to the club licencing system and that may prevent the achievement of financial fair play recommended parameters lies in the salary issue that are paid to the professional athletes.

Obviously, and as is demonstrated above by the objectives pursued by the measure, other duties must be fulfilled, but the truth is that the wage payments are a major concern for regulatory bodies in European football. Thus, paragraph 1 of Annex VIII of the UEFA Licensing Regulation considers that unpaid wages are those that have not been settled in accordance with the agreement. Subsequently, the number 2 of the same article mitigates this rule saying that wage amounts are deemed to be paid if the club proved that on 31 March, 30 June and 30 September has paid the totality of the outstanding amount or has a written agreement with the creditor to extend the deadline for payment on time, even beyond the indicated dates.[44]

---

[43] We are familiar with one of the greatest European examples on the matter, a very illustrative example of how the instrument under study works and to whom it applies. Using the example of AS Monaco FC, who invested hundreds of millions of euros on transfer players and wages, like the case of Radamel Falcao, João Moutinho or James Rodriguez. Still, the men of the Monegasque principality did not infringe the financial rules, so they were allowed to participate in the next European competitions editions. It should be added that AS Monaco FC was playing in the French Second League (League 2). To have more information about the topic please consult: Michael Bertin, "*The Strange Story Behind Falcao's Blockbuster Move to Monaco",* (3, June, 2013), electronic available at: http://grantland.com/the-triangle/the-strange-story-behind-falcaos-blockbuster-move-to-moncao/.

[44] A club that saw the application of this provision to go from paper to practice was Vitoria Guimarães SC. The Portuguese team, during the 2011/2012 seasons, failed to meet the financial requirements to participate in the UEFA Europa League, and therefore ended giving up such participation. The proper Portuguese Football Federation denied this liscencing process to the *"conquerors*".

Another possibility for not considering that payments are in arrears will be the possibility of clubs filing a court challenge against the lender who is claiming the retribution. Such pleading acts as challenging the application, showing that the payments were liquidated in the due time, or by presenting any exception (peremptory or dilatory) that enables the lender not to pay. Consider, however, that such provisions are not applicable according to the law of each country, but by the standards of the upper body of the European football. *Ipso modo*, the CAS judgment that decided the exclusion of Malaga from European competitions was clear in stating that the concept of overdue payments is not arbitrary and does not take in consideration were the defaulting club is domiciled, but it is aimed at attending a uniform idea issued by UEFA in order to avoid differential treatment.[45] Nevertheless, such precepts did not manage to establish the desired balance, since the UEFA itself has demonstrated a permissive behaviour in applying hefty penalties – specifically, the exclusion of European competitions - to clubs with less status.[46]

On the other hand, they opt for other penalty measures concerning clubs that can manage to present large margins of profit. Indeed, and not trying to defend the entities that failed to comply, the truth is that this regulation only served to increase the differences between the top and powerful clubs and the remaining ones. The wealthiest continue to participate in European competitions with the right of receiving great prize money, premium participations, signing new lucrative television and advertising contracts whilst others feel the economic difficulties increasing. Apart from the ticket receipts reduction they will not also take advantage of participation premiums or the outcome of any positive results in UEFA competitions.

These facts are closely connected with the assumptions of the financial fair play instrument, requiring that beyond the premise mentioned regarding the overdue payables, the sports companies must comply with a requirement that will be deeply stressed, later on, in my research. This requirement, the break-even one, is empirically characterized by requiring that

---

[45] Clifford J. Hendel Partner Araoz & Rueda Abogados, "*Regulations: Málaga CF v. UEFA: lessons for financial fair play",* World Sports Law Report, Volume: 11, Issue: 12, pp. 3-4.

[46] Case C-2013/A/3067, Málaga CF SAD v. UEFA, arbitral award of 08 October 2013 In this, the court clearly states that: "The idea to define in a uniform manner –- and independently of where a club is domiciled –- the term "overdue" is, thus, not arbitrary, but instead perfectly in line with the principle of freedom of association. This also follows from CAS jurisprudence (CAS 2012/A/2702, para. 91) according to which "[p]ursuant to Art. 154 of the Swiss Act concerning Private Law, the UEFA regulations cannot be overridden by the national laws as this would lead to unequal treatment among clubs from different countries. ..", §9.4, p.15.

a club most honour its duties, must not spend more than it generates, and must live in accordance with their means.

In order to support this idea, a pertinent example is the Portuguese approach to the matter, in which the clubs are obligated, under article 53 of the League of Professional Football Competitions Regulations to liquidate the existing debts with the organiser.

Moreover, at the time of the registration process in one of the existing professional competitions - Premier League, which is more relevant, and Second League - it is mandatory that the applicant clubs apply for registration - under penalty of impossibility of registration contracts of new athletes or using athletes with contracts already registered in previous seasons - and that clubs submit certificates evidencing that the tax situation and pertaining to social security is regularized, unless they are facing legal disputes and/or tax oppositions.

In European competitions, the regulators who proceed with the club licensing process[47] shall require that each club prove that as of 31 March preceding the license season it has no overdue payables towards football clubs (article 49), in respect of employees (article 50) and social/tax authorities (article 50 bis). All these requirements will be presented when one introduce, furthermore, the notion of the break-even rule.

Concerning article 14 which encompasses the *"license"* concept, it should be given special emphasis to the provisions of n.4, a).

This rule states that if the club that already possesses a license to compete becomes insolvent, the same should be withdrawn. However, and contrary to what usually is pursued in the entire document, UEFA demonstrated a rare concern regarding the financial situation of the most depleted teams. Hence, if the CFCB predicted that if a club is found in liquidation, but there was a major objective of financial salvation, the authorization should not be revoked. In addition to the protection of the financial health of the clubs, the legislature's intention was that the provision meet the standards and assures the preservation of truth and integrity in sports.

Actually, preventing a club from competing in an advanced state of a given competition would lead to questionable outcomes - there might exist "*secretariat winners"* rather than the victories are decided in the appropriate place. Despite this apparent openness to clubs that are in financial recovery process, UEFA can act in a diametrically opposite way.

---

[47] *See,* supra note 26, at article 14, p. 13.

Indeed, it has the power to revoke the decision of a national organ that granted the internal license to compete in European competitions.

This happened because it is fruit of the prevalence of sports laws issued by UEFA, at an European level, that take precedence over the national laws of each country. This rule is based on a concern of equity and impartiality of the organization regarding the assessments that are executed under European supervision.[48] This could happen in a country where the insolvency provisions and corporate recovery laws are more permissive, in order to subvert the required financial regulation system.[49]

Although UEFA argues in its general principles that take into account all cases and performs its analysis separately and individually, the truth is that this analysis has been conducive to greater asymmetries between clubs with financial power and others that are in contingency to find revenue sources that allow them to liquidate their debts.

Being the representative institution of all federations and concurrently of all European clubs, it can be considered that UEFA is the sponsor of this scenario by not assuring that the mechanisms established by it are provided with parity and allow a fair competition, on equal terms.

The application of this institute only began in season 2013/2014, to allow clubs to adapt to the new rules, particularly those clubs that depended on the direct intervention of the money from wealthy owners to cover the losses. The UEFA Financial Control Body as per Article 54 of its Regulations should monitor the licensing request made by the entity that wants to compete in European competitions should execute such control. These liabilities are related to national associations that have a duty to cooperate with the first in examining the feasibility of the application for registration.

In order to comply with this duty, the licensing application shall be made following the procedure of paragraph 3 of Article 9 of the CL&FFP regulation and will start by the

---

[48] *Cf.* Pritha Sarkar and Iain Rogers, REUTERS, *"UPDATE1 – Soccer Mallorca to appeal European exclusion at CAS",* p.1, electronic available at: http://www.reuters.com/article/soccer-europa-mallorca-idUKLDE66R23E20100730, (last updated: 30, Jul, 2010).

[49] In 2012, it was granted a license to compete to RCD Mallorca, by the competent national authorities in this particular case, the Real Federácion Española de Fútbol RFEF). However, despite UEFA had received all the documentation of the RFEF with licensing, decided to investigate an insolvency action against the club, which ran in the city court, even with credit claims and attempts to negotiate with creditors. Therefore, in this sense, the club from the Balearic Islands lost the right to compete in European competitions and was replaced by the team that preceded it at the end of the season, Villarreal Club de Fútbol. *Cf.* Juan D. C. Pérez, *"El Fair Play Financiero En El Fútbol: El Caso del Real Mallorca Y Su Exclusión de la UEFA Europa League de la Temporada 2010-2011*" available at: http://www.ruizcrespo.com/wp-content/uploads/2012/07/18-articulo%20austral-fair-play-financiero.pdf. *See also*, UEFA, Disciplinary, available at: http://www.uefa.org/disciplinary/news/newsid=1509489.html (last updated, 11 May, 2014).

submission of the relevant documentation related to the applicants' license, by the national association, to UEFA. Subsequently, UEFA should respond to such submission, notifying the national federation of the decision, together with the list of all teams admitted to UEFA competitions. This process highlights the aforementioned duty of cooperation, which arises from the need for all agents to carry out a joint effort of sports moralization, for it to become fairer and more sustainably competitive, with the sports component overlapping the financial one. Besides not granting the license, other disciplinary measures may be imposed under Article 72 of CL&FFP, with clubs failing to meet the financial requirements being sanctioned.[50] There are a number of potential sanctions for not complying with the provisions.

What sanction will affect the failing club depends on the grade of violation, where a warming is the mildest sanction and exclusion from the future UEFA competitions and withdrawal of title/awards are the most severe punishments.[51] An exception to this straitjacket lies in Article 15 of the CL&FFP regulations, which provides the possibility of clubs obtaining a special license if they have not undergone any licensing process or have been entered at a lower level by not participating in professional competitions. This event will happen when, for sporting merit, the club has obtained the right to participate in European competitions. Sometimes, merit for the victory or just the presence in a final of their countries cup, despite not having participated in the major leagues of it, which guarantees direct access to those prestigious tournaments.

To summarize, Club Licensing is used to be eligible to participate in UEFA club competitions. Clubs must obtain a license issued by the competent national body. In case of doubt as to whether a club fulfils the admission criteria, the UEFA General Secretary[52] may refer the case to the CFCB - (the *"Admission Procedure")*. Club monitoring encompasses that clubs that have been granted a license must comply with the "monitoring requirements" of the CL&FFP regulations, (e.g.: 'no overdue payables' requirement).[53]

---

[50] *Cf.* UEFA, Settlement agreements: details, electronic available at: http://www.uefa.org/protecting-the-game/club-licensing-and-financial-fair-play/news/newsid=2244685.html, (last updated, 08 May, 2015).

[51] *See;* supra note 26, at Article 8, *"Catalogue of Sanctions",* pp.11-12.

[52] Until these days Gianni Infantino was UEFA's General Secretary. Nowadays, he is the FIFA's President. See more information about the topic in David Conn, The Guardian, *"Everything you need to know about Gianni Infantino"*, available at: http://www.theguardian.com/football/2016/feb/26/gianni-infantino-fifa-president, (last visited, 26 Feb, 2016).

[53] UEFA CL&FFP (2015), Part III UEFA Club Monitoring, Chapter 1, *"Other monitoring requeirements",* at Articles 65-67 (as further detailed in ANNEX IX which provide that clubs must not be overdue on payments to other football clubs, employees or social and tax authorities).

4.1. The Break-Even requirement

As mentioned above, the break-even requirement will be the central feature of this licensing process of the clubs. Thus, the notion of "break-even" result is introduced in Article 60 of the CL&FFP regulations. This clearly defines that "the difference between relevant income and relevant expenses is the break-even result, which must be calculated in accordance with Annex X for each reporting period".[54] Following, clubs should presented positive fiscal assessments translated into a positive balance sheet, with more income than expenses. The 'relevant income' and 'relevant expenses' concepts are defined in Article 58 with additional information set in Annex X.

Thus, these concepts highlight some of the most important aspects of the rules that constitute the object of the present research. At a first glance, 'relevant income' is restricted to income arising from football operations[55], which may vary between match day revenues, to sponsorship and broadcasting details and profit on players transfers. On the other hand, 'relevant expenses' includes player transfers, wages and related costs among with other operating expenses.

There are also anti-evasion mechanisms like arm's-length trading and related party transaction criteria[56], which will be analysed with more attention below.

Typically, the 'break-even' requirement is assessed by taking in consideration the three previous reporting periods, with the aggregate of those three periods being the 'aggregate break even result'.[57] There is just an exception in the first monitoring period's assessment, which only considers the two previous monitoring periods.[58] If the 'aggregate break-even result' is negative it represents an 'aggregate break-even deficit' for that monitoring period.[59]

However, given the financial difficulties that clubs had until the introduction of this new mechanism, UEFA predicted in the article the possibility of clubs to present an acceptable deviation from the break-even result up to 5 million by 2018.[60] From the first 2013/14 monitoring period, an owner can invest up to €45m over two seasons in exchange for

---

[54] *See,* supra note 26, at Article 60, p.37.

[55] *See,* supra note 26, at Article 58 nº1, p.36.

[56] *See,* G. Daniel, *"The UEFA Financial Fair Play Rules: a Difficult Balancing Act",* (2001) ESLJ 50, §9, p.2.

[57] *See,* supra note 26, at Article 59, p.37.

[58] *Id,* at Article 59 and 59 nº2.

[59] *Ibid.*, at Artcile 60 nº2.

[60] *Ibid.,* at Article 61º.

more shares in the club. It means that wealthy owners can only have, after the 2013-14 season, on average, the opportunity to spend €15m worth of cash for shares each yearn the club, vis – à - vis on transfers fees and wages[61], and so forth. That figure is reduced to €10m per season (€30m over three seasons) for the 2015-16 season. If an owner does not put any money into a club by way of cash for shares, each club's acceptable loss suffers a considerable decreasing, being just €5m over three years.[62]

4.2. Relevant Income

The notion of relevant income encompasses the several revenues sources of clubs. It ranges from gate receipts, broadcasting rights, sponsorship, advertising and other commercial activities and operating income. The profits made on disposal of players registrations or income derived from it, excess earnings on disposal of fixed assets and finance income are also accountable for the purpose of Article 58. As we can see, the *supra* definition of 'relevant income', presented in Article 58 of the CL&FFP regulations, only encompasses income that arises out of football operations. Nonetheless, it does not take in consideration the equity injections derived from the clubs' wealthy owners, explaining why clubs nowadays struggling to comply with the rules.

These happens because they are constrained in their ability to include income derived from their wealthy owners in the BE's control. Subsequently, clubs cannot boost relevant income, (e.g. derived from sponsor deals) or shrink relevant expenses (e.g. derived from purchased services like the rent of the stadium), through dealings with related parties, in order to fulfil the *break-even* prerequisite.[63]

The rationale behind this is to avoid situations like those seen in Chelsea FC, TSG 1899 Hoffenheim, Anzhi Makhachkala, and so forth. The best-known example of financial doping is the huge investment into Chelsea FC made by the Russian oligarch Roman Abramovich. This investment was taken right after his winning control of the English Premier

[61] *See,* supra note 48.

[62] *Id,* at Article 61º nº2, p.38.

[63] J. Christian et al., "*The Financial Fair Play Regulations of UEFA: An adequate Concept to Ensure the Long-Term Viability and Sustainability of European Club Football?",* International Journal of Sport Finance, , Vol 7, nº 2, 2012, West Virginia University, p.130.

League club management in 2003, which prompted public notice all over Europe.[64] Since Abramovich's appointment, the catalogue of teams[65] whose decision-making powers have been assumed by wealthy investors has constantly increased, with English clubs being transformed into a 'sweet pot' (e.g. Liverpool FC, Manchester United, Manchester City).[66] In January 2011, Russian billionaire investor and politician Suleiman Kerimov purchased his hometown club Anzhi Makhachkala, with the aim of transforming it in one of the most prestigious clubs in the world. Notwithstanding, Kerimov suddenly lost interest in the project, drastically decreasing the budget and selling the key players of the squad.[67] Since their relegation in season 2013/2014, the club is nowadays back in the Russian Premier League, the highest tier of football domestically and it is trying to achieve more stability.

As a rule, it could be said that the more prosperous a club is, the better its chances to increase money back from wealthy owners because of its higher business potential. Müller et al. delineate the degree to which this angle is distorted by financial doping and correspondingly the alleged status of equivalent open doors is damaged. An inordinate outside financing scheme performed by the clubs seems to abuse 'sport-moral' guidelines, from the time when subsidizing can be given freely from sport success, the tradition and notoriety of the club.[68]

Backing into the Anzhi Makhachkala situation, evidently, it was neither the notoriety of the club (established not sooner than 1991) nor exceptional performance achievement in the field that stimulated the Russian takeover nor the signing of players renown worldwide from there on. Such cases undermine the principle of legitimacy[69] - nowadays, clubs do not

---

[64] Pending the mid of 2012, Abramovich supposedly invested more than a billion Euros into the club. *Cf.* Gibson, O., 2012. *"Chelsea record their first profit of the Roman Abramovich era",* The Guardian online, available at: http://www.guardian.co.uk/football/2012/nov/09/chelsea-record-profit-roman-abramovich-era.

[65] Regarding TSG 1899 Hoffenheim's situation is public noticed that during his childhood, Dietmar Hopp played in youth teams and has since become the chief financial backer of the club. He watched them rise and shine from the fifth tier of German football to the Bundesliga. *Cf.* Ryan J. Bailey, *Featured Colomunist,* Bleacher Report, "*Ranking the 10 Richest Football Owners inthe Forbes Billionaire Rich List",* available at: http://bleacherreport.com/articles/1980581-ranking-the-10-richest-football-owners-in-the-forbes-billionaire-rich-list/page/11 (last updated 4, March, 2014), p.11.

[66] *Cf.,* supra note 65.

[67] Schubert, M. & Könecke, T., 2014. *"'Classical' doping, financial doping and beyond: UEFA's financial fair play as a policy of anti-doping."* International Journal of Sport Policy and Politics, 6940, pp.1–24.

[68] Hall, S., Szymanski, S., & Zimbalist, A. S. (2002), *"Testing causality between team performance and payroll—The cases of Major League Baseball and English soccer",* Journal of Sports Economics, 3, 149–168. *See more info,* Simmons, R., & Forrest, D. (2004), *"Buying success: Team performance and wage bills in U.S. and European sports leagues."* In R. Fort & J. Fizel (Eds.), International sports economics comparisons, pp. 123–140). Westport, CT: Greenwood Publishing.

[69] Lenk, H., 2010. *"Sport von Kopf bis Fuß(ball)".* Berlin: Lit. p.10.

necessarily need to achieve good results and, even so, wealthy owners are willing to subsidize them.

At the present, the overall difficulty regarding the indispensable level of equal opportunities might also be appraised. Succeeding the rationale of Daumann[70], Müller et al.[71] rationale, it should be noted that 'it is neither possible nor preferable to fully equalize all factors that have an influence on a particular competition; for example, cultural, sociological and economic determinants'. Nevertheless, an unregulated professional European sports framework tends to increasingly monopolize the market industry, due to a self-propagating winding of success - an underlying achievement stimulates higher income that thus can be utilized to fortify the group, making future achievement considerably more likely.

An answer for this may be an extra redistribution of income as a solution for market flaws and for the avoidance of the recognised predominance of a few clubs. Governance of this kind could breach the legitimacy of competitions, breaking the establishment and the targets of games. Another risk could be the reaction of fans and spectators, which comprises one of the key business foundations of this industry.

Another critical topic is whether CL&FFP is justified by a cost-benefit evaluation. Notwithstanding the aims and purposes of these provisions, the costs of regulation affected by implementing, monitoring and enforcing the CL&FFP mechanism are prospective to be considered high, which complicates the UEFA's job of ensuring that all licenses are granted, or not, in the due time. This occurs because on one hand, the clubs will ostensibly aim to comply with the BE requirements, while on the other hand trying to declare income from non-football operations as 'relevant income'[72], adulterating and misrepresenting the rules of the game. In the meantime, UEFA's legal authorities are still confused in the middle of their own regulations and the sports industry is being continuously discredited.

4.2.1 The Financial Doping status quo of the clubs

Despite how and by whom the cash is given, a wide scope of these money injections have a mutual feature, that is the cash given 'vaguely', meaning that it arises out of non-football operations that have nothing to do with the day-to-day running business. It is the

[70] Daumann, F., 2003. *"Kooperenz im Sportmanagement".* Sportwissenschaft, 33 (3), pp. 356–360.

[71] See, supra note 64, p.139.

[72] *Id.*

disproportionate degree of these measures that is perceived as a foe of competition by contenders and its spirit is in many cases criticized for being financial doping. First, Arsenal FC manager Arséne Wenger ostensibly used the term 'financial doping' when speculating about Roman Abramovich's investments.[73] As formerly introduced, the term is used more and more by social media as well as among the several football stakeholders. The first to attempt an academic definition of the concept described 'financial doping' as 'financial means not earned by a club directly or indirectly through its sporting operations or supporter reputation, but rather provided by an external investor, benefactor or creditor detached from sporting merit and supporter reputation as well as from sustainable investment motivations.'[74]

By including financial specialists and also leasers and advocates and subsequently augmenting the potential vehicles of cash flow, the authors cover the distinctive practices beforehand portrayed. In any case, the last part of the definition appears to be risky: 'separated (…) from supportable speculation inspirations'. Following the author's reasoning, 'a sustainable use of finance in the case of football clubs would be realized by temperately investing in infrastructure or youth development and not by covering pathological financial deficits caused by overspending on salaries and transfer fees'.[75] This description is evidently based on the respective remarks in UEFA's CL&FFP rules, Annex X.[76]

Financial doping can in the first place be perceived as the situation in which a sports entity borrows irresponsibly in order to contract and pay high-performing players, threatening the entity's long-term sustainability. Secondly, the condition in which the owner of a sports entity invests his or her own personal capital to assure top players, before trusting on the revenue the entity is able to produce for itself. It is clear that financial doping may be understood in a very restrictive way, based on UEFA's FFP regulation, or in a slightly extensive approach. In the following, it is reasonable to assume that financial doping is regarded as being illegitimate by a sufficiently high number of stakeholders and deemed to be breaching the law issued by the corresponding regulating body.

If they wish access to European competitions, managers will have to run clubs based

---

[73] Wilson, J., The Telegraph (online), *"Arsene Wenger accuses Mancherter City and Real Madrid of 'financial doping'"*, at http://www.telegraph.co.uk/sport/football/teams/arsenal/5985204/Arsene-Wenger-accuses-Manchester-City-and-Real-Madrid-of-financial-doping.html (07 Aug 2009, last visited 13, March, 2016).

[74] *See* Müller et al. 2012, supra note 68, pp.123-124.

[75] *See, Id.,* p.124.

[76] Club Licensing and Financial Fair Play Regulations (2015), Annex (B), "Income from non-football operations not related to the club", (e.g. §L), p.80.

on payrolls that allow them to stay within the hard limit drawn by their football income and the 'total' acceptable deviation defined in the FFP regulations. In any case, as we have seen, wealthy owners are no longer able to save a club for licensing procedure purposes if the latter overinvested in compensation (e.g. salaries and transfers) with the outcome that relevant expenses surpass significant income by more than the 'aggregate' acceptable deviation. Understanding *ex ante* the result of summing maximum permitted deficit plus the external money injections, contemplated by UEFA for authorizing purposes, football administrators will have no choice other than to relax their clubs' financial plan *ex post*.[77] In the event that they wish to participate in UEFA's European competitions, administrators will need to manage clubs in order to have balance sheets that permit them to comply within the hard cap drawn by their football wage system and the maximum acceptable deviation criteria branded in the CL&FFP regulations.

4.3. Relevant Expenses

The idea is pacifically deciphered in a way that motivates the use the money for the future advancement of the clubs, grounded in supportable development with long-term perspectives, rather than in short horizons. In any case, the definition distinctly states that points of interest, like expenditure on youth development and community costs, and financial expenditure specifically inferable from the construction of tangible fixed assets, are prohibited under the BE's appraisal.[78]

Expenses defined in section C n.1 of Annex X include costs of sales and materials, employee benefits expenditures, amortisation[79] and impairment related to player registrations,

---

[77] Egon Franck, *"Financial Fair Play in European Club Football – What is it all about?",* University of Zurich, Department of Business Administration, UZH Business Working Paper No. 328 (2014), pp.3-4.

[78] *Cf.* Annex X(B) §h, §i, §j, §k, §m, §n, and Annex X (C) nº1 §g, §ix of UEFA Financial Fair Play Regulations (2015), pp- 83-89.

[79] The Swiss Ramble Blog, a renown football business blog explains the concept by stating that when a player is purchased, his costs are not immediately booked to the profit and loss account, but they are capitalised as an asset and written-off over the length of his contract, so there will be a cost impact for a few years. As an example, it was reported that ManCity player Yaya Touré was bought for £24 million in July 2010 on a five-year contract, so the annual amortisation was initially £4.8 million, and should have finished in June 2015. However, after two years, his contract was extended in June 2012 by a further two years to June 2017, meaning that he then had five years left on his new contract. At this point, his remaining value was £14.4 million (£24 million cost less two years amortisation at £4.8 million). The new amortisation charge was thus £2.9 million a year, i.e. the remaining £14.4 million divided by the five years now left on the contract. ManCity have extended the contracts for virtually all the big players signed in 2010/11 at some point (either 2012, 2013 or 2014), which has had the advantage of reducing the annual amortisation charge in recent years, but has the disadvantage of extending the period for which these players' transfer fees are amortised. The Swiss Ramble Blog, "*Manchester City - I Threw A Brick Through A Window"* electronic available at: http://swissramble.blogspot.pt/2015/09/manchester-city-i-threw-brick-through.html (las updated September 8, 2015).

loss on disposal of player registrations (or costs of acquiring player registration), finance costs and dividends. The prohibition of account expenses sustained in building tangible fixed assets is likewise noteworthy. As a result it presents the differences between good debt and bad debt, where obligations tackled to create, e.g. another stadium or invested in the youth development sector is viewed as great, while obligations tackled as to buy new players or to fulfil players' pay commitments are viewed as awful. It is important to point out that this qualification is totally consistent with UEFA's point of view, for empowering dependable spending for the long-term advantage of football. However, perceiving that this is a political or worth judgment by UEFA, based on enhancing the general social welfare of football in the future, as opposed to on what might be the greatest advantage of individual football clubs or specific private partners of those clubs.[80]

On one hand, some may argue that the rationale behind the above findings on clubs is dual, as it stops rich promoters from contributing an unlimited amount of money on signing new players and paying their astronomic compensations (e.g. benefits like signature prizes) over a few time. On the other hand, it also prevents clubs from spending at a level that they can't sustain, risking to struggle with insolvency issues. These mandatory criteria are evidently substantial in terms of CL&FFP objectives given that they are grounded on a framework that comprehends the distinct nature of football, its clubs and competitions.

Henceforth, UEFA's CL&FFP regulations inform football as a proper ground to scrutinize how best to provide an alternative understanding of clubs' performance and commitment, financially and socially speaking. Broadening the number of fictions told about them and focusing on distinctive ways of considering and of distinctive things to grasp.[81] In associations such as football clubs the power of connections between the club and its several partners is considered as vital. Supporters, representatives and communities might be perceived as just as essential as money streams, profits and debt schemes. In addition, there is support of rightful and persistent enthusiasm for the implementation of these foundations from different governmental sectors, general society, and the third sector.

The accountability process could be seen in a broader perspective and that would likely enable clubs to display a more positive scenario of their societal part than is actually the

---

[80] Cooper, D.J. and Sherer, M.J. (1984), "*The value of corporate accounting reports: arguments for a political economy of accounting"*, Accounting, Organizations and Society, Vol. 9 Nos 3/4, pp. 207-232.

[81] Hines, R. (1988), "*Financial accounting: in communicating reality, we construct reality"*, Accounting, Organisations and Society, Vol. 13 No. 3, pp. 251-261.

situation.[82] This methodology is additionally reliable behind the rationale that in order not to lose focus on their true foundations as non-profit-driven associations – which practically speaking, constitutes the most common feature that football clubs represent, in spite of their corporate governance structure [83] – the clubs should have management and reporting structures that deal with multiple bottom lines and which emphasize a holistic conception of the organization.[84]

Therefore, 'relevant income' and 'relevant expenses' concepts enshrined in CL&FFP can be described as a type of normative regulation[85] whereas excluded areas[86] also generate some controversy since they are seen as a subterfuge for clubs practice financial doping by that allows clubs to deceiving costs, as well as an escape from the sanctions stipulated by UEFA if a club overspend.

---

[82] Morrow, S., 2013., *"Football club financial reporting: time for a new model*?", Sport, Business and Management: An International Journal, 3(4), pp.297–311.

[83] Gammelsæter, H. (2010), *"Institutional pluralism and governance in 'commercialized' sport clubs",* European Sport Management Quarterly, Vol. 10 No. 5, pp. 569-594.

[84] Anheier, H.K. (2005), Nonprofit Organizations: Theory, Management and Policy, Routledge, London, pp. 353-407.

[85] Above nº 82.

[86] There are also other exceptions that cause confusion amongst journalists and fans. *Cf.* Annex XII: Voluntary agreements for break-even requirement.

4.4. Related Party Transactions

Relevant income and relevant expenses from related parties must be adjusted to reflect the fair value of any such transactions as Article 58º §3 regards. To ensure that owners of clubs are not capable of financial doping in clubs' revenues constitutes the specific purpose of the legislature with this rule. This provision is strictly linked to relate parties' concepts enshrined in Annex X (F) of the CL&FFP regulations. The article mentions 'related party, related party transactions and fair value of related party transactions'.[87]

So as to mitigate these concerns, the CL&FFP expressly incorporates the concept of 'fair value', by which any 'related party' transaction must be assessed. Moreover, given the amount of money involved within this industry, it seems almost predictable that disagreements will rise regarding who or what determines a 'related party' for the purpose of a particular financial transaction and then, what is understood by the term 'fair value' of the related party's transaction. Previously, there were some cases (for example, ground or shirt sponsorship deals) that raised precisely this type of issue.[88] According to UEFA's CL&FFP regulations a related party is a person or entity that is related to the entity that is preparing its financial statements.

UEFA call it the reporting entity, directed to the substance of the relationship and not merely the legal form, with the attention being given in considering each possible related party relationship.[89] According to other very specific criteria, other person or closer members of that person's family who may possibly interfere in the business are also liable for the purpose of related transactions purposes.[90] It must now be clarified what is UEFA's point of view regarding third parties transactions. UEFA deemed a related party transaction as a transfer of resources, services or obligations between linked parties notwithstanding of whether a price has been charged.[91]

---

[87] Annex X (F) of UEFA's Club Licensing and Financial Fair Play Regulations (2015), p.89.

[88] In 2012/2013, Paris Saint Germain signed a huge sponsorship deal with the Qatar Tourism Authority. The four-year deal is sait to be Worth €150m per year, rising to €200m in the final year of the contract. It must be added that PSG are 100% owned by the Qatar Sports Initiative that in turn is owned by Qatar Investment Authority. This sponsorship deal has clearly been settled to artiffically boost the profits of the french team so that the club could comply with the break even requirement, passing the Financial Fair Play first monitoring period assessment. Mark Ogden, The Guardian, "*Paris Saint-Germain sponsorship deal eclipses all rivals but opens questions about Financial Fair Play regulations",* electronic available at: http://www.telegraph.co.uk/sport/football/european/10443730/Paris-Saint-Germain-sponsorship-deal-eclipses-all-rivals-but-opens-questions-about-Financial-Fair-Play-regulations.html (last updated, 12 Nov 2013).

[89] Related party definition: Annex X (F) nº1, p.89.

[90] Annex X (F) nº2, p. 90.

[91] Related party transaction definition: Annex X (F) nº4, p. 90 and Annex VI (E) §j, and p.61.

As highlighted above, a related party transaction may, or may not, have taken place at fair value. This concept is enshrined in CL&FFP regulations with the legislature setting that fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable willing parties in an arm's-length transaction.[92] An arrangement or a transaction is deemed to be 'not transacted on an arm's length basis' if it has been undertaken on terms more favourable to either party to the arrangement, than would have been obtained if there had been no related party relationship.[93]

At first glance injections of money seem to be advantageous as they bring extra money into the clubs' pocket which – behind some traditional points of view – increases the level of the game, make stakeholders (namely the consumers) happier, players wealthier, and so forth. Nevertheless, deceiving money injections are not a synonymous that simply translate into more money for the budget, because they might have the capability to adversely affect potential managerial incentives and decision-making processes within the football industry.[94] As before mentioned, the BE's result assessment may be softened by the provision which opens the opportunity, under certain strict criteria, of reflecting funding of youth development sectors and infrastructure throughout an outside investor, as non-relevant expenses. Nonetheless, such practices could hypothetically be classified as a development in the UEFA's mechanism, being a way of progressively softening the rules. Yet, since they continue permissible under certain gaps they might me subject to the perceived question of legitimacy because exceptions and thresholds might open the door for circumventing the spirit of the law.

Whereas UEFA has not made enough efforts as to exclude sponsorship money by related parties and it should be added that CL&FFP entails considerable stipulations in respect of related party transactions. Annex VI states that there must be confirmation 'that related party transactions were made on terms equivalent to those that prevail in arm's length transactions'.[95] These provisions, in connection with CL&FFP Annex X, establishes that if the projected fair value is different from the recorded value then the income considered

[92] Related party transaction at Fair Value definition: Annex (F) nº5, p.90.

[93] *Id.*

[94] Madden, P. (2011), *"Welfare economics of "Financial Fair Play"* in a sports league with benefactor owners", forthcoming in: Journal of Sports Economics, p.177.

[95] Annex VI (E) §j, p. 61.

relevant must be adjusted suitably but reminding that no further adjustments can be made to relevant income.[96]

Somehow surprisingly, UEFA mention the example of support by a related party.[97] However, if Manchester City's sponsorship agreement seems like a clear picture of what is a related party transaction at above value, practice shows us that the reality is different. Analytically, part of the sponsorship deal involves the development of the 'Etihad Campus' infrastructures, the space around Manchester City's stadium. At the end is it expected that it will include merchandising developments, an Etihad call centre, a sports science centre, coaching facilities and youth training accommodations.[98] There is some expenditure that is specifically rejected from the relevant expenses concept, as part of the break-even calculation.[99]

These exclusions are intentionally created to benefit the clubs and the game, always based in a sustainable development ground. In respect of youth development in particular, the CL&FFP document states 'the aim is to encourage investment and expenditure on facilities and activities for the long-term benefit of the club'.[100] There is a strong analogy between the development of the Etihad Campus and the activities deliberately excluded from the relevant expenses used for the purposes of the FFP break-even calculation. The specific amount of the wealthier Etihad sponsorship money that will be ascribed to the activities excluded from the relevant expenses is very difficult to scrutinize and it remains to be seen whether UEFA will choose to do so.[101] It is widely accepted that reporting these deals may be an extremely hard task because to follow the cash trail for this type of sponsorship deal is very difficult, partly because Etihad's accounts do not disclose all the information.

Following this rationale, as the FFP regulations grant UEFA broad administration of

---

[96] Annex X at B. (k), p.80.

[97] *Cf., Ibid.*

[98] Flanagan, C.A., 2013. *"A tricky European fixture: an assessment of UEFA's Financial Fair Play regulations and their compatibility with EU law",* The International Sports Law Journal, 13(1-2), pp.151-153.

[99] See Annex X (C), pp.81-87.

[100] *Ibid* at (C) §g, p.83.

[101] PA, *"UEFA to Investigate Manchester City over Etihad Sponsorship Deal",* Tthe Independent, (16 August 2011), http://www.independent. co.uk/sport/football/premier-league/uefa-to-investigate-manchester- city-over-etihad-sponsorship-deal-2338555.html. (last accessed 12, March, 2016).

See also, Herbert I (2011) *"City seal sponsorship deal worth £400 million with Etihad",* The Independent (9 July 2011), http://www.independent.co.uk/sport/football/premier-league/city-seal-sponsorship-deal-worth- 400m-with-etihad-2309387.html. (last accessed 12, March, 2016).

justice powers[102], it should be able to tackle any potential mystification on the matter and discover to what extent the sponsorship deals are concluded at a fair value.

At its simplest, in situations where the declared fair value of the related party transaction is investigated by the UEFA Club Financial Control Body, an impartial third party assistant will perform a fair valuation by following standardized market practices and assign a fair value to the related party transaction.[103] The club may choose an independent third party assessor, which has been approved by UEFA. In this case the third party assessor must not be subject to any conflict of interest with the club (e.g. contracted with the club in any other business). The value assigned by the third party assessor would then be used for the calculation of the BE result.[104]

One should may argue that this rule is breaching the principal of equality among the clubs and widening, even more, the gap between them through discriminating those who do not have possibilities of covering their losses rather than those who keep injecting money from their pockets - financial doping - and continue adopting alternative and creative ways to comply with the criteria and to pass the BE assessment.

These moves were subject to much criticism from the Council of Europe Parliamentary Assembly Committee on Culture, Science, Education and Media, Good Governance and Ethics in Sport, which argued that 'In order to avoid improper transactions of this kind, UEFA should prohibit clubs from sponsoring themselves or using associated bodies to do so'.[105]

[102] For further details, see Procedural Rules Governing the UEFA Club Financial Control Body (UEFA 2012), III. Decision Making Process of the CFCB, Chapter 1 Investigation.

[103] Annex (F) nº6, p.91.

[104] *Cf. Id.*

[105] Council of Europe Europe Parliamentary Assembly Comittee on Culture, Science, Education and Media, Good Governance and Ethics in Sport (Provisional Report, 2012), p.9.

Part II. The evolution of UEFA Club Licensing and Financial Fair Play Rules within European Union law

1. Sports Special Features

Today we live within a European dimension so we must reckon with the Treaty of Lisbon, which entered into force on 1 December 2009. It has, at last, brought sport within the explicit scope of the Treaty. Nonetheless, the Treaty of Lisbon has not made any fundamental change regarding the previous rules, and it emphatically does not offer any sort of binding or comprehensive approach to the topic. One may argue that EU sports law is still an ambiguous creature and its shape has been moulded incrementally over many years, long before the rise of the Treaty of Lisbon.

Once sport has an economic dimension, sporting practices may be assessed against the broad scope provisions enshrined in TFEU's. The Treaty contains provisions that exert a broad control over the functioning of the whole economy. These include, most significantly, the provisions on free movement of persons and services and the rules on competition. In this way EU law has overlapped with 'internal' sports law and sporting conducts must comply with the Treaty.

Generally speaking, since sport has been perceived as having a financial dimension, sporting practices fall within the extent of the Treaty. It encompasses rules that apply an expansive control over the working of the global economy. Most essentially, these incorporate the free movement of persons and the freedom to provide service provisions and the provisions based on European competition law grounds. Subsequently, sporting practices must be in accordance with the Commission regulations and this coincides, partly in time, with the 'domestic' sports law framework.

It is the complex and ambiguous confluence between sporting practices and EU law that has long stimulated my interest in this field. There are issues that need to be addressed, vis – à – vis how legitimate is the EU's claim to subject sporting practices to the rules of the Treaty given that the TFEU offers no regulation on the scope to which sport's individual specificities should inform the legal analysis as well as in what way are the frequent appeals of sports federations to be granted autonomy from legal intervention legitimate, given that their decisions frequently carry significant economic implications.

In fact, recent years have shown that the rapid increase in the commercial significance of the sports sector, driven in part by the technological and regulatory reshaping of the broadcasting industry, has brought with it even more willingness to scrutinise the role of law in influencing the choices available to sports governing bodies.

One should consider that EU trade law should not be applied to sport in a way that neglects sport's undoubted special characteristics. For example, clubs in a professional sports league are not competitors with the same nature or characteristics found in the common markets. Sports clubs need opponents; they need credible rivals to compete against. There is an alignment of interdependence among clubs in the same league that is almost cultural. They are strictly linked, which marks the organised sport as culturally and economically different, distinguishing it autonomously

Some special features make competitive sport a special case, and the law should regard that otherwise will experience justified criticism for insensitive mishandling with the matter. Instead, some experts in this subject are reluctant once they could be sceptical to assume that sport is quite as special as sports federations sometimes claim it.[106]

Namely, they argue that they cannot approve that the simple finding that a practice with economic implications is included in the sporting sector is sufficient to entitle its immunity from legal device. Claiming favourably to a model that embraces an inevitable intersection between the EU provisions and sports corporate governance – that is, a model according to which sport is subject to EU law, but that boasts special features that are also relevant to the legal analysis. The interest of this question lies in deciding just where to frame competitive sport because it is based on a compelling claim for a specific treatment. This treatment given by the law recognizes the social and economic special features of sport and where, on the contrary, sports bodies are only focused on defending their own interests.

There is no doubt that sport has its own specificities. The question is to what degree EU law and policy apply.[107] As a substance of constitutional body enshrined in Article 165 n.1 of the TFEU and a subject of administrative and judicial procedures until the present day, sport is not so singular. In this regard,

The Nice Declaration on Sport helds that 'the Community must, in its actions under the various Treaty provisions, take account of the social, educational and cultural functions inherent in sport and making it special'.[108] This does not mean that sport is singular and

---

[106] Siekmann R., *"Is sport 'special' in EU law and policy"*, Future of sports law in the European Union: beyond the EU Reform Treaty and White Paper (2008). Blanpain R., Hendrickx F., Colucci M (eds). Kluwer Law International, pp. 37–49.

[107] *See, for e.g.,* Bogusz B., Cygan A., Szyszczak E., *"Is sport special?"*, The regulation of sport in the European Union (2007). Edward Elgar, UK, pp. 3–32.

[108] The Treaty of Nice, agreed by the Heads of State or Government at the Nice European Council signed on 26 February 2001, is the culmination of eleven months of negotiations that took place during an Intergovernmental Conference opened in February 2000. It entered

unique under EU law although, as many other sectors (agriculture, transport, *inter alia*), it has its own special features that individualize it among the different industries.

Reference should be made to three important CJEU (then EEC) rulings that show an evolution in the very description and understanding of the sports issues made by the very Court itself. These serve to frame many of the considerations and factual analysis and they illuminate the confusing tensions involved in the formation of the spirit of law. In Walrave and Koch v. Union Cycliste Internationale, the Court treated the composition of national sports teams as not affected by the Treaty's ban of discrimination on grounds of nationality and considered the selection of players to represent a certain international federation is a question of purely sporting interest and, as such, has nothing to do with economic activity.

The outcome was reasonable; there is simply no internationally representative football without restrictions on selection policies. Besides, we must note that football clubs are strictly connected to the country of origin. As addressed in Part I of this piece of research, following national competitions, the top teams are selected to participate in international tournaments. It is key that a large number of the clubs' players derive from their country of origin. The team would be less attractive for its supporters if it does not happen. It would be inexplicable, for instance, for a team such as Barcelona to be composed exclusively of English and German players. If we reach this point, clubs will no longer be affiliated to an area but to a company.[109] National boundaries may delimit the very nature of the business and, in football, they must not be forgotten. They do not constitute simply barriers to trade that impose arbitrary isolation on the market but rather a fundamental tool of the structure and popularity of the entire football industry.[110]

Showing respect for the specificity of sports phenomenon on an industrial scale, the Court employed a not very well articulated legal formula. His reference to a matter of interest 'purely sporting' that 'as such has nothing to do with economic activity' is unpractical since

---

into force on 1 February 2003 after being ratified by the fifteen Member States of the European Union (EU) at that time, according to their respective constitutional rules.

[109] Vagelis Alexandrakis, *"The Sporting Exception in the EC free movement rules",* Revista de Estudos de Gestão, Jurídicos e Financeiros, 1st Year, Ed. Nº 03 (Jul./Sep. 2010), pp. 91-99.

[110] Weatherill S., *"Discrimination on Grounds of Nationality"*, European Sports Law, Collected Papers, 2nd Edition, ASSER International Sports Law Series, Springer, p. 44.

the selection rules governing international football federations are clearly of sporting interest.[111] But at the same time, those rules have much to do with economic activity as well.

1.1. European Union law and policy

International football is definitely a big-money industry. When, for example, players improve their performance and increase visibility and popularity, it also increases clubs' prospects of generating more revenue. Their potential earning depending on the players' international exposure is also another aspect that has implications for the budget. In fact, sports and economics fields often overlap - most sporting rules are only in the sphere of sporting interest although they also play an economic role.

What is really in the balance here, is not a set of sporting rules disassociated from a set of economic ones. Rather, it is a group of sporting rules, which also carry out economic repercussions. Therefore, they must be legally evaluated, but not necessarily convicted under the rules of competition. The present research demonstrates that EU legislation and domestic law, regarding sporting level, cannot be separated. The Walrave and Koch case presented an unsuccessful demand to a separation of the sports field of the economic sphere and, at the same time, accepts that competitive sports possesses special features that should be reminded in the implementation of the European provisions. Bosman, the second paradigmatic ruling, is quite in the same line.[112] When referring to the legal issue, the CJEU approached 'the difficulty of severing the economic aspects from the sporting aspects of football' but, somehow, it did not offer a well-defined answer. On one hand, the Court admitted the possibility of excluding a 'purely sporting interest' practice from the scope of EU law. But, in order to do that, it would have to be proven that a particular national team chose its players discriminatorily, based on national grounds.[113]

The Court's decision shows that, in general terms, there is significant acceptance for the recognition of a certain autonomy that is given to the sports area, free from EU law

---

[111] Case 36-74, B.N.O. Walrave and L.J.N. Koch v Association Union cycliste internationale, Koninklijke Nederlandsche Wielren Unie and Federación Española Ciclismo, Judgment of the Court of 12 December 1974, E.C.R. 1974:140.

[112] Nevertheless, the rationales that such behaviours could be applied generally within the industry were left behind. Case C-415/93, Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club Liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman, Judgment of the Court of 15 December 1995, E.C.R. 1995:463.

[113] Weatherill S., *"European Football Law"*, European Sports Law, Collected Papers, 2nd Edition, ASSER International Sports Law Series, Springer, p.75.

interference but with the clear awareness that the origin and purpose of these 'non-economic reasons' are not easy to discern. Once again, in its judgment Bosman, the Court, while reluctant to consider the opportunity to comment on what terms the sports practices should be justified under European competitive rules, was on the other side ready to identify in which terms they should consider their intrinsic characteristics, as in Walrave and Koch.

It stated that in view of the considerable social importance of sporting activities (particularly within the Community), the maintenance of balance between clubs must be an objective. To preserve a certain degree of equality and uncertainty of results and encourage the recruitment and training of young players are foundations that must be assumed as legitimate.[114]

However, the Treaty does not offer anything that explicitly point in this direction. During that time, it not even intended to mention the specificity of sport. In addition, from the time the Lisbon Treaty was implemented, the relevant provision enshrined in Article 165 of the TFEU does not provide substantially concrete steps to resolve this kind of dispute. But, when the CJEU ruled that specific practices challenged in Bosman clashed with EU law, it proved to be available to an interpretation that covers the clear recognition of the specific sport features. The Court assumed an interpretation that is, *ab initio*, qualified to apply to any structure under which the worker's freedom to sell workforce on the ending of the contract is restricted by arrangements between bosses.[115] This shows the impact of the decision, far beyond the football sphere.

The third case study clearly offers a more concrete vision and intellectually more reasonable explanation of the relationship between sporting rules and EU legislation. The decision of July 2006, Meca-Medina and Majcen v. Commission maintains receptivity in considering the theme of the particularities adjacent to sports and the enhancement of EU legal aims.[116] Regarding the difficulty of detaching the economic aspects from the sporting aspects of a sport, the CJEU argued that Community provisions concerning freedom of movement for persons and freedom to provide services do not preclude rules or practices considered justified on noneconomic grounds which relate to the particular nature and context

---

[114] Supra note 110, para. 106, p.32.

[115] Weatherill S., *"European Football Law"*, European Sports Law, Collected Papers, 2nd Edition, ASSER International Sports Law Series, Springer, p.78.

[116] Case C-519/04 P, David Meca-Medina and Igor Majcen v Commission of the European Communities, Judgment of the Court (Third Chamber) of 18 July 2006, E.C.R 2006:492.

of certain sports competitions.[117] Besides, it has emphasized, that such a restriction on the extent of the provisions at stake must remain limited to its proper goal. Consequently, it cannot be relied upon to exclude the whole of a sporting activity from the scope of TFEU rules. The CJEU argued that 'the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down'.[118]

In addition, if the sporting activity in question falls within the scope of the Treaty, the rules governing this activity must meet its requirements, 'which, in particular, seek to ensure freedom of movement for workers, freedom of establishment, freedom to provide services, or competition'.[119] With this, the notion of 'purely sporting rule' is abandoned, that while had economic repercussions, was still automatically excluded from the scope of the Treaty. The Walrave and Koch misconception is then left behind. The practice can pursue a sporting nature - and perhaps even 'purely sporting' in the intention - but it must be tested against the requirements of the EU antitrust law, when it carries economic effects. But the CJEU did not abandon his reasoning, consistent to ensure that the application of EU law bears special concerns and, thus, should be considered carefully and with particular legal sensitivity.

In Meca-Medina the CJEU considered that the overall aim of the rules was the fight against doping, with the purpose of competitive sport being considered in a fair and equal basis. Indeed, sanctions on the freedom of action of the athletes should be taken as inherent in the anti-doping framework. The Court will adopt a conduct where these behaviours are not put beyond the scope of judicial review as a matter of principle, but is properly cautious in inquiring the practice performed by sports federations in such sensitive areas.

These are sporting rules – not purely sporting rules – and they are examined under an interpretation of EU law, which is sensitive to sport's special concerns (e.g. to pursue clean competition). This piece of research is not intended to defend a model that embraces overlaping between EU provisions and internal sports law would solve all problems. These rules are examined under an interpretation of EU law that is sensitive to the particularities in defining the scope of the special characteristics of sport that embody the expectation of a 'clean' competition. One may say that Meca-Medina focuses attention in the right direction

---

[117] Case 13-76, Gaetano Donà v Mario Mantero, Judgment of the Court of 14 July 1976, E.C.R. 1976:115, para. 14 and 15, p. 7. *Cf. also,* Meca-Medina, para. 26, p. 14.

[118] Case C-519/04 P, David Meca-Medina and Igor Majcen v Commission para. 27, p. 14.

[119] *Id,* para. 28.

when suggests that these rules, together with a model that embraces both EU legislation and internal sports law, would be extremely helpful.

The previous established practice, initiated by Walrave and Koch, tends to generate little unconstructive arguments about whether the practice is purely sporting in nature and, therefore, immune to the possibility of seeing its contents assessed in the light of the existing EU competition law, vis-à-vis articles 101 and 102 TFEU.

Although taking into account the above considerations, it is better to accept that the vast majority of sporting activities have economic implications.

However, when pretending to apply EU law to them, appropriate respect for the particular sporting context in which they are used must be demonstrated. In the Meca-Medina judgment, the Court adopted a more extended position. It was implemented a broad view of the EU's antitrust law scope, but having brought sporting rules in light of TFEU, it simultaneously shows that is prepared to write about the importance of the issues, but not by explicitly adding the described provisions as 'justifications' in the Treaty. It should be noticed that this approach is adopted in order to allow the continued application of practices that are considered as necessary to implement and achieve the legitimate sporting objectives. The Commission also refers to sport's specific economic aspects in its ENIC v. UEFA judgment.[120] It argued that provisions prohibiting multiple control of football clubs' ownership repressed demand but, in addition, they were also crucial to sustain a trustworthy competition characterized by the uncertainty of the result and so forth.[121]

Then, this becomes the core argument when EU law collides with sports governance – to which extent those adverse economic effects can be tolerated. As the Court dictated in Meca-Medina, the restrictions imposed by rules adopted by sports federations 'must be limited to what is necessary to ensure the proper conduct of competitive sport'.[122]

This statement of conditional autonomy of sports federations under EU law, when there is an intersection between European law and domestic sports law, is recognized. However, within this legal overlaping area[123], sports agents have managed to show how and why the rules are necessary to accommodate their specific interests - fair play, credible

---

[120] Commission Press Release, 37806 ENIC/UEFA, IP/02/942, 27 June 2002.

[121] Weatherill S., *"On Overlapping Legal Orders: What is the 'Purely Sporting' Rule?"*, European Sports Law, Collected Papers, 2nd Edition, ASSER International Sports Law Series, Springer, p.405.

[122] Case C-519/04 P, David Meca-Medina and Igor Majcen v Commission para. 47, p.19.

[123] *See*, supra note 119.

competition, national representative teams, and so on. In Meca-Medina decision, the Court shows that the judges will not easily dismiss sports activities.

1.2. European Union law and the dissociation between pure sporting rules and economic rules

In this piece of research my intention is to refer sport to try to develop a better understanding of EU legislation rather than centering sport as the main focus of research. The legal dilemma revolves private entities practices that create distortions in the labour market (e.g. discrimination on grounds of nationality; restrictions of competition; abuse of dominant position, *inter alia)*. They could be dealt with under what is now Article 45 TFEU and in the context of what are now Articles 101 and 102 TFEU. It seems reasonable to adopt this position because treated under both provisions, how can someone deal with the clashes between different assumptions of competition law and the right to free movement? After all, in goods, Article 34 TFEU controls the acts or omissions of public authorities (only), leaving Articles 101 and 102 TFEU to deal with private practices. Following, the labour market seems cause for concern due to the "over-regulated" system presented by European legal framework.[124]

A primary concern is the scope of justification. It was different (and wider) under the rules of competition than under the rules of free movement. To defend a separation between the two is not the main goal, but instead, it is claimed that the practice of restrictive behaviours is an interesting aspect that does not proper fit in the Treaty's structure and that a mixed justification test should be planned.[125] Achieving this mixture is, more or less, what the Court later on although, so far, it lacks authoritative legal guidance. Revisiting the Meca Medina decision, it is best understood in contexts that assume sports bodies' practices as necessary for the organization of the game and consider their specific features as legitimate and licit, independently of the EU provision according to which they are assessed.[126] Otherwise, one may consider that the provisions of the Treaty text are not constructive. The specific question of discrimination in a football club was a starting point.

---

[124] Weatherill, S., European Sports Law, Collected Papers, 2nd Edition, ASSER International Sports Law Series, Springer, p.7.

[125] *Cf. Id.*

[126] Weatherill S., *"Anti-doping revisited: the demise of the rule of 'Purely Sporting Interest'?"* European Competition Law Review 2006, pp. 645-657.

It allowed inquiry into the extent to which such discrimination can be considered necessary in order to support the professional leagues at the national level and, at the same time, respect the sport specificities.[127] The Court, in Bosman, vigorously approached it, as well as the European Commission when stated that 'each sport has its specificities and deserves to be treated differently according to these objectives. The EU will thus not impose general rules applicable to all European Sports'[128] and this interpretation is somewhat that sport federations settle with the Commission.[129] The White Paper on Sport focused on some of the fundamental foundations of the specificity concept of the sport structure and the specificity of sporting activities and of sporting rules[130] whilst the Commission Staff Working Document on Sport and Free Movement of January 2011 argued that 'the specificity of sport cannot be used as an excuse for making a general exception to the application of free movement rules to sports activities. Exceptions from EU's fundamental principles must be limited and based on specific circumstances.[131] Last but not least, specificity of sport has been included in Article 165 TFEU and there is an indication that after the Lisbon Treaty adjustments entered into force, the idea might have gained some extra importance within the framework of familiar examinations.[132]

---

[127] Weatherill S., *"Annotation (Bosman Case)",* European Sports Law, Collected Papers, 2nd Edition, ASSER International Sports Law Series, Springer, pp. 101-132.

[128] The European Commission explained that in order to acess the compatibility of sporting rules, it evaluates if any restrictive effects of those rules are inherent to the pursuit of the objectives and whether they are proportionate to them. See more in Commission Communication on Developing European Dimension in Sport, 2011, para 4.2, p. 10-11.

[129] *See, "Sport Governance in Europe",* The EU and Sports Matching Expectations*,* White Paper Consultation by Commissioner Figel with European Sport Federations, Brussels 20, Sept. 2006, pp.1-3.

[130] Commission, The EU and Sport: Background and Context, Accompanying Document to the White Paper on Sport. SEC (2007) 935, pp. 3-6.

[131] Commission Staff Working Document on Sport and Free Movement (2011), pp. 2-11.

[132] Pijetlovic, K., 2015. *"The Sporting Industry"*, EU Sports Law and Breakaway Leagues in Football, ASSER International Sports Law Series, Springer, Chapter 2, p. 34.

2. CL&FFP potential legal challanges within EU law

The principle legal concerns that UEFA's CL&FFP regulations presents under EU law are that it restricts free movement of workers and that it constitutes an anti-competitive agreement. As FFP mechanism has the potential to impinge upon clubs' economic behaviour, one must assess the potential engagement of Article 101 TFEU once it may impact upon the movement of players between clubs and determine whether there is a breach of Article 45 TFEU; and if Article 101 or Article 45 would normally be engaged in such circumstances, one must consider whether this would be vitiated by the principle of the specificity of sport (or 'the sporting exception', as it is also known).

The point that the CL&FFP regulations generate negative externalities, specially but not solely for workers and consumers, links it to the examination of EU law, predominantly under antitrust provisions, but possibly also on behalf of the provisions on free movement of workers. Moreover, several experts in the field have pointed out the likelihood of such a dispute, due to the competition horizontal and vertical restraints that the CL&FFP rules would involve.[133] This may have influence under the CAS jurisdiction (and, then, by the Swiss Federal Court), which would have legitimacy to assess cases implicating the CL&FFP regulations. The UEFA has declared that it is operating side by side with the EC regarding the CL&FFP rules. Nevertheless, it is known - at the latest because of the Bosman case - that such collaboration is no invincible guarantee against the CL&FFP regulations infringing EU law. Perhaps there won't be anyone to defy the CL&FFP regulations, as the different football participants seem to have accepted them and the EC's position supports them. However, there is a demand to consider completely the compatibility of the CL&FFP regulations with EU law.[134]

Considering that no overall exception for sporting rules from EU legal framework would be accessible, and that CL&FFP regulations are likely to impact a restriction on the free movement of athletes - by the 'salary cap' it designs – and restriction of competition as well. The main issue is that of their justifiability: separately from the reasonably limited

[133] Duval, A. & Mataija, M., *"European Football Governance – Looking Backward, Looking Forward",* European University Institute, Global Governance Programme, Issue 2013/03, p.3.

[134] *Cf. Id.*

justifications stipulated by Article 101(3) of the TFEU, a rule characterised by restrictively effecting competition might be admissible only if those are intrinsic to the lawful objectives chased and do not go further what is needed to attain it.

Firstly, is it pointed out that UEFA implemented a legal instrument that restricts competition in the players' market options and imposes the decrease of salaries' weight in the budget – like a US salary cap – but deprived of compensation via earnings from increased competitive balance.[135] Secondly, that UEFA held provisions that sacrifice potential welfares arising from equity injections from wealthy owners[136], also know as 'sugar daddies' into football accounts.[137] Lastly, it is also mentioned that UEFA issued a guideline that will 'fossilize'[138] or 'petrify'[139] the hierarchy of European football, creating a barrier to entry.[140] It is the purpose of this piece of research to address namely the second one, with the others being subadjacently considered.

2.1. The problem with the salary cap

General sports leagues around the globe are those in which participating clubs compete among themselves to win the respective tournaments and, following Stephen Ross rationale, 'to sign players, subject to rules imposed by the league or agreed among themselves'. [141]

---

[135] *Cf.* Peeters, T., Szymanski, S., "*Vertical restraints in soccer: Financial Fair Play and the English Premier League",* Research Paper nº 028/2012, University of Antwerp, Rottenberg, (2012), p.7.

[136] 'The FFP restrictions limiting sugar daddy investment appear to be a backdoor method to accomplish what American closed leagues can directly regulate. Ownership in closed leagues is by definition at invitation only. All leagues have regulations as to who may own a team, and they also place some restrictions on the activities in which the owners may engage. The NFL, for example, enforces the most severe restrictions on ownership. They ban large publicly traded corporations from retaining teams. This policy allows the league to be comprised of only individual owners, creating a relatively homogeneous group. The NFL also proscribes majority owners from also holding an MLB, NBA or NHL teams located in NFL home cities. New owners of existing franchises in American leagues typically require a super majority vote of the current owners, for instance 75% approval in MLB. Those desiring to buy teams are sometimes famously denied' *in* Maxcy, J. et. al., 2014. *"The American View on Financial Fair Play"* Philadelphia , Pennsylvania, USA, ESEA Conference Volume Oxford, UK : Peter Lang International Academic Publishers, p.15

[137] Madden, P. (2011), *"Welfare economics of "Financial Fair Play"* in a sports league with benefactor owners, forthcoming in: Journal of Sports Economics Journal 2015, Vol. 16 nº2, pp. 159-184.

[138] Vöpel, H. (2011), "*Do we really need financial fair play in European Club Football? An Economic Analysis"*, CESIfo DICE Report, pp.55-58.

[139] Sass, M. (2012), *"Long-term Competitive Balance under UEFA Financial Fair Play Regulations"*, Working Paper No. 5/2012, Otto von Guericke, University Magdeburg, pp. 10-11.

[140] Vöpel, H., 2013. *"Is Financial Fair Play really justified? An economic and legal assessment of UEFA's Financial Fair Play rules"*, Hamburgisches WeltWirtschaftsInstitut (HWWI) nº79, pp. 3-15.

[141] Stephen Ross ,*"Player Restraints and Competition Law Throughout the World",* Marquett Sports Law Review Vol. 15 nº49, (2004), p.49.

The traditional approach imposed in different leagues - European and beyond - is the wage restraint of athletes, a mechanism that can be implemented in several ways, across different sports and in many jurisdictions. A 'club salary cap' translates into maximum cash limit imposing what a certain club can spend, collectively, in the salaries of their athletes.[142] The limit may also be set for all the clubs in the same competition or may be provided in accordance with some criteria, vis-à-vis the percentage of a team's revenue, being designated as 'team salary cap'.[143] Salary caps can be designed in a number of different ways as we can also find 'player salary caps' that determines the maximum amount that is allow to be paid to a particular athlete, which often varies according to some aspects such as the number of years of service or the wage he was receiving formerly or combinations of the two.[144] Alternative division can be designed amid 'soft caps' - that teams may exceed regarding determined criteria (e.g. to keep a player that has been with the team for a long time) and 'hard caps' - that teams can never exceed.[145]

'Salary caps' are distinct from 'luxury taxes' or 'surcharges on sport teams' aggregate pay roll in excess of a predetermined limit'.[146] However, both seek to curb excessive spending since the imposition of a luxury tax creates an incentive for teams to keep salaries below the defined level.

Distinctions aside, all have a common goal that passes by decreasing the level of expenditure of the clubs. In this sense, they are as incentives for the teams keep their spending on wages below the value set by the 'salary cap'. This proper feature is also real in UEFA's CL&FFP regulations, which operate in a very similar conduct.

The starter of salary caps in European soccer has had major repercussions on European sports and its lawfulness may be tested due to the considerable amount of money involved. When UEFA's CL&FFP provisions became applicable in 2012, salary caps were

---

[142] *Id.,* p.50.

[143] Helmut Dietl and others "*Welfare Effects of Salary Caps in Sports Leagues with Win-Maximizing Clubs"*, Working Paper No 08-25, Institute for Strategy and Business Economics, University of Zurich, 2008, pp. 3-4. *Cf. also,* e.g., the 'NHL has a $59.4 million team salary cap and a $11.88 million player salary cap' *by* Squeet *in* "*Salary/Payroll Cap the Most Complicated Thing in the NHL"*, LEAFSPACE (Aug. 2010), retrieved from: http://media.fans.mapleleafs.nhl.com/_8-SalaryPayroll-Cap-the-most-Complicated-thing-in-the-nhl/blog/2519175/122856.html.

[144] Stephen Ross, above nº134, p.50.

[145] Lindholm, J., 2011. *"The Problem With Salary Caps Under European Union Law: The Case Against Financial Fair Play*", Texas Review of Entertainment & Sports Law, 12(2), pp.193-194.

[146] Helmut Dietl et al., *"The Effect of Luxury Taxes on Competitive Balance, Club Profits, and Social Welfare in Sports Leagues",* Inst. for Strategy and Business and Economics, University of Zurich, Working Paper No. 91, 2009, pp. 2-20.

are already an important feature of European football industry, with clubs constantly learning cap management.[147]

The CL&FFP regulations pointed out, ab initio, many doubts as to its compatibility with the rules of competition enshrined in European legislation. Of note, several North American experts in this field have argued that restrictive measures such as 'salary caps', used in professional sports, are considered anti-competitive in nature and, therefore, breach the law of the country.[148]

It should be noticed that E.U. competition law as U.S. antitrust law pursues to eradicate anticompetitive agreements and abuse of dominant positions within the different Member-States.[149]

The main legal provision enshrined in UEFA CL&FFP regulations is the so-called break-even requirement. This BE requirement is a type of 'salary cap' similarly to a previously measure enacted by UEFA, in an attempt to restore European football finances. A 'salary cap' was a comparatively distant conception to European football, notwithstanding their practice in other sporting competitions.[150] This perception improved when the enforcement of the CL&FFP regulations. The nearest European professional football clubs had come to applying a 'salary cap' mechanism was the G-14 group. In 2003, the organisation composed by the Europe's 14 most prosperous football clubs, entered into a resolution according to which the clubs accepted to 'limit their salary expenditures to 70% of their turnover starting in the 2005-06 season'. [151]

Nevertheless, this measure was never successfully implemented and the clubs failed to conform to the limit. The exact cause of the breakdown is up for discussion, with some analysts indicating that it was probably due to the deficiency of the mechanism's enforcement, while others suggest it was never really placed.[152] Resembling the G-14 cap, the BE requirement is a 'relative salary cap', meaning, as mentioned before, that the capped

---

[147] Some may argue that American professional teams recruit personnel whose only job is cap management. *Cf.* Ari Nissim, "*The Trading Game: NFL Free Agency, the Salary Cap, and a Proposal for Greater Trading Flexibility"*, Sports Lawyers Journal 11/257, (2004).

[148] *See*, e.g., Daspin, D. Albert (1998), *"Of Hoops, Labor Dupes and Antitrust Ally-Oops: Fouling Out the Salary Cap",* Indiana Law Journal: Vol. 62 Issue nº 1, Article 6, p.32.

[149] Articles 101º and 102º TFEU.

[150] Stephen Ross, above nº134, p.50-51. The author refears to the fear that implementing a 'salary cap' in European football will leave that league exposed to player poaching by other domestic competitions.

[151] *Cf.,* Helmut Dietl et al., "*Welfare Effects of Salary Caps in Sports Leagues with Win-Maximizing Clubs", Instute* for Strategy and Business and Economics, University of Zurich, Working Paper No. 86, 2009, pp.3, 5-6.

[152] *Id.* , At 5-6. Dietl and others (2009) *and* Lindholm, J. (2011) above nº 146, p.195, footnote 35.

amount is different for each club. This distinguishes it from the more common "absolute salary cap'.[153]

[153] Helmut Dietl et al., 2009, *"The Effect of Luxury Taxes on Competitive Balance",* Club Profits, and Social Welfare in Sports Leagues, 2 (Inst. for Strategy and Business and Economics, University of Zurich, Working Paper No. 91, p.5.

2.1.1 The main purpose of a 'salary cap'

'Salary caps' are constantly striving towards the purpose of achieving 'competitive balance.[154] Those who support such measures subscribe to the theory that financial differences between teams translate into competitive differences, and that rules must be enacted to ensure that small and large market teams have equal possibilities to compete.[155]

The major proponents of this budget constraint measure are also reasoning that major budgetary differences between clubs create a greater gap between them. It also increases the competitive imbalances, leaving some clubs with greater ability to attract investment and in a more privileged position than others. Therefore, these rules should be implemented to ensure that all teams have access to the same market opportunities.

Regardless of what its main purpose was, the current rules of CL&FFP issued by UEFA, did not intend, in some authors' opinions, to promote better competitive balance.[156] According to the upper European football governing body, the CL&FFP regulations do not aim to determine a 'level playing field but only a certain minimum level'.[157]

These considerations, however, may be problematic. While an 'absolut salary cap' can effectively improve the competitive balance - giving the teams the opportunity to compete in equal conditions - a 'relative salary cap' similar to the CL&FFP rules will further complicate the task of those clubs, which have less capacity to attract investment, when competing against the most powerful teams in European football.[158] In this sense, if one consents that there is a link concerning a club's financial status and its achievement in sports competitions the CL&FFP regulations will make it tougher for less prosperous teams to play with conventionally solid teams.

As a rule, these clubs of smaller dimension generate less revenue and, therefore, they resort more often to capital investment to develop. Some experts in the field have already

---

[154] Daspin, D. Albert (1998), *"Of Hoops, Labor Dupes and Antitrust Ally-Oops: Fouling Out the Salary Cap",* Indiana Law Journal: Vol. 62: Iss. 1, Article 6, p. 107, discussing the purpose of the NBA salary cap. *Cf. also,* RFL Operational Rules § E1.9.3.4; Section E1 – Super League Salary Cap Regulations, Issue 10, February 2012, p.348.

[155] Christopher D. Cameron & J. Michael Echevarria, *"The Ploys of Summer: Antitrust, Industrial Distrust, and the Case against a Salary Cap for Major League Baseball"*, Florida State University Law Review 22/827, pp. 852-853.

[156] Lindholm, J., 2011. *"The Problem With Salary Caps Under European Union Law: The Case Against Financial Fair Play*", Texas Review of Entertainment & Sports Law, 12(2), p.195.

[157] European Commission & UEFA, "Joint Statement", issued by Vice-President Joaquín Almunia and President Michel Platini, para. 8, p.2. (21, March 2012).

[158] FT View, *"A level playing field benefits football's elite'*, Financial Times, retrieved from: http://www.ft.com/cms/s/0/e7259964-008b-11e5-b91e-00144feabdc0.html#ixzz44JAUiMc5 (24, May, 2015).

studied this matter. Kenesse, in particular, concluded a study regarding a 'salary cap' very similar to the one enshrined in CL&FFP regulations and argued that such measures would degrade, even more, the level of competitive balance of clubs, regardless of whether they are primarily related to profit-seekers or win-seekers.[159]

The CL system was held by UEFA as a need to guarantee the integrity of competitions and especially to safeguard the continuity of international competitions for one season.[160] Following, the EC had already stated why this is so significant when argued that one needs to consider the side effects that may arise from a possible bankruptcy situation of one or more clubs pending the season[161], to be aware of the theme's substance. At the same time, emphasized that the principal goal of the CL system is to ensure that the integrity of competitions is fulfilled, avoiding sudden insolvency panoramas during the season that distort them. These sorts of effects are inevitably bad for the proper clubs as the calendar of competitions is changed, the remaining clubs in the same competition will also be affected and a legal nebulous area might begin (e.g. regarding broadcasting rights and other forms of financing). [162]

This aspect has not been openly stated with regard to the FFP rules, but likely operates correspondingly because the BE requirement is strictly connected to the CL system. Combining both, we see that CL&FFP regulations 'seek to achieve long-term financial sustainability and thereby ensure the long-term viability of European football'.[163]

2.2. A mention to the third-party ownership issue

Recently, the former FIFA President Joseph Sepp Blatter announced that third parties would be forbidden to arrest the economic rights of football players – Third-Party Ownership. First of all, one should distinguish between economic rights and federative rights of athletes. The federative rights are those originated from the assignment of the right to register a player from one club to another and the economic rights refer to the income derived from the transfer

---

[159] Kesenne, S., 2000. *"The salary cap proposal of the G-14 in European football",* Econimcs Department, University of Antwerp, B-2000, p.11.

[160] UEFA Club Licensing Report, "*Here to Stay",* supra note 25, p.4.

[161] E.U. Conference on Licensing Systems for Club Competitions, Sep. 2009, Background Paper 2.

[162] *Id.*

[163] Lindholm, J., 2011. "*The Problem With Salary Caps Under European Union Law: The Case Against Financial Fair Play*", Texas Review of Entertainment & Sports Law, 12(2), p.197.

of a player from one club to another. With this decision of the upper world football governing body, a debate on the TPO will probably be over, but not with all its major issues dispelled. [164]

It is general knowledge that the labour market in football is mostly open, where players can easily be transferred during the transfer periods prescribed for that purpose. Given the unpredictable loans and last minute megalomaniac transfers, the football labour market is a constant source of fantastic episodes for millions of fans who intensively follow the market days.

What to say, then, about the capital market; it must be assessed whether capital move easily within the football industry. In some countries, the answer is affirmative, particularly in England, where it is a real possibility, since the necessary money is available. In the last decade, famous European football clubs like Chelsea, Manchester City or even Manchester United were bought. Other countries, like France, have also begun to follow this trend. Once it is so easy to buy equity in a club, the investors do not need to buy the economic rights of the players.

On the other hand, countries such as Portugal and Spain have a clearly distinct reality. Traditional clubs like FC Porto, Benfica, Real Madrid or Barcelona maintain the tradition of being run by their own members and they do not seem very receptive to the idea of being acquired by outsider billionaires from Russia, Qatar, U.A.E and so forth. These clubs thus have a diametrically opposed financing model. It was in that moment that TPO's were implemented, with them being crucial in these types of clubs funding, in recent decades. They financed the club by buying the economic rights of the players, but not the clubs, getting the money for the football industry but through another vehicle. Sometimes, theis means of financing originated conflicts with clubs and even coaches. But, overall, they still are a very effective way to finance clubs. If a TPO buys the economic rights of a player (or part thereof), in association with a football club, it enables football clubs to acquire the best players and, therefore, be more competitive. The variety of TPO circumstances derives from its contractual basis. The parties are free under domestic private law to ingeniously draft those contracts as they see appropriate, each one of them being a particular kind of TPO in itself.[165]

---

[164] Lindholm, J., 2015. *"Can I please have a slice of Ronaldo? The legality of FIFA's ban on third-party ownership under European union law".* The International Sports Law Journal, 15(3), pp.137–148.

[165] van Maren, O. et al., 2015, *"Debating FIFA's TPO ban: ASSER International Sports Law Blog symposium"*. The International Sports Law Journal, 15(3), p.234.

There are risks for both the club and for TPOs, but they will always exist, because the ownership of the economic rights of a player is not directly related to its sporting performance. However, it is clear that if a player is very good, and the club is able to increase its market value within one or two years, the player will then be sold to an inserted larger club in a more affluent market, with benefits to be shared between the club and its TPOs. In the case of Portugal, clubs like FC Porto and Sport Lisboa Benfica have proved as an excellent investment for the TPO's, which helped transform these clubs into 'talent centres', allowing the reveal of many players to European football and sale of the best to the major clubs within the industry. Without the capital provided by the TPO's excellent asset export performance of these two clubs, it would have been much more difficult and almost unlikely their presence among the eight best teams in the UEFA Champions League 2014.

The TPO's allow clubs to include players sometimes too expensive for their budgets. So both profit from the situation. The club improves with better players; the players evolve and are eventually transferred to other clubs, by much higher value. As there is more revenue, all parties win. If the imported player eventually proved not to be such a good investment, the costs in such cases are supported not only by the clubs, but are also shared with the TPO's. It can be said that the TPO's are strategic partners for this type of clubs because they can provide additional capital, which has been efficiently used in most cases. For these, the TPO's were clearly a competitive advantage, and this was probably the reason that led the English clubs and others to protest against this reality.

Some figures related to the industry, in particular, President Michel Platini, argued that there are transparency issues related to TPO's because their owners are not known, or because it is entering illegal money in the world of sport.[166]

But many financial institutions or investment funds that are very active on capital markets have the same features. What is the difference? Probably there should exist a FIFA record for the TPO's - such transparency might permit the football governing bodies to search any possible conflicts of interest between, e.g., those who possess a stake in a football club and those who also possess the economic rights of a football player - but to me, it is not sufficient to change the industry's economy. The fundamental issue is that the football

[166] TPO is also seen as a dubious financing technique used to circumvent the new UEFA Financial Fair Play regulations and to prop up clubs that are chronically in financial troubles. Finally, there is a moral dimension. For example, UEFA president Michel Platini likened TPOto a type of modern 'slavery', Reuters (2015) *"Platini delighted soccer's 'modern-day slavery' is ending",* retrieved from: http://in.reuters.com/article/2015/03/16/soccer-platini-tpo-idINKBN0MC1B220150316,(16 March 2015).

industry is a financially very attractive business, generating millions in revenue. So, it is expectable that investors enjoy this type of business. In markets where they cannot easily acquire control of the clubs, investors start to buy players, making money continues to circulate and making possible for many clubs achieve higher performance levels.[167]

Unfortunately for some cubes, like the Portuguese and Spanish ones, FIFA and UEFA do not seem to share these ideas, and former FIFA President (Mr Blatter), announced its prohibition by a brief adjustment period. It must now try to interpret how the clubs will be able to adapt to the new reality. A possible answer to this question will invite the TPO's to directly invest in the clubs, becoming shareholders. Another solution is the TPO's become like the investment banks and lend money directly to clubs to finance the players' transfers. Whatever could be the solution, money will arrange a way to continue its flow. However, in this relationship called Third Party Ownership, an important limitation is apparent from proper FIFA regulations. Article 18bis of the RSTP plays an important role in this issue by prohibiting that the third party has influence on written contracts between clubs and players.[168] FIFA nonetheless discovered that Article 18bis is deficient for attaining its intended purposes and on December 19, 2014, it presented a new ruling to the RSTP.[169] The new provision, Article 18ter, which incorporation occurred on May 1, 2015, encompasses a total and unconditional ban on third-party ownership. It held:

'No club or player shall enter into an agreement with a third party whereby a third party is being entitled to participate, either in full or in part, in compensation payable in relation to the future transfer of a player from one club to another, or is being assigned any rights in relation to a future transfer or transfer compensation.'

This provision, which can be referred to as FIFA's TPO ban, is enforced by disciplinary measures. The measure is mandatory at national level and all national football

---

[167] Domingos Amaral, *"TPO's; de parceiros estratégicos a acionistas dos clubes?"* in Direito do Desporto, Newsletter nº3, 2014, Morais Leitão, Galvão Teles, Soares da Silva, Law Firm, p.7.

[168] This legal provision was almost an imposition of sporting truth. This was due to the fact that two Argentine players who came to England to represent West Ham United (namely Carlos Tevez and Javier Mascherano) were being linked to companies. The companies, which hold the economic rights of these two athletes, forced 'hammers' to put in contracts a clause that prevented the club to decide the terms and conditions of the sale of players, as well as values. Given the controversy originated by the situation, FIFA and the English Premier League had to be quick to state that such powers were unfair. Thus, Article 18ºbis of the RSTP emerged.

[169] FIFA, Circular no. 1464, Zurich, 22 December 2014.

associations must include it, without modification, in their national regulations.[170] It should be noted, however, that even before the FIFA's ban, some national bodies - for example the EPL – have already implemented similar requirements.[171]

Following these articles result, two hypotheses have been trailed: the hypothesis pursued by France, England and Poland - who share the opinion that making a restrictive interpretation of the ruling fully prevent the economic sharing of players' rights - and the permissive hypothesis, but without violating the prerequisites of the mentioned items. One might refer, as before mentioned, to countries like Portugal, Spain, Italy and South America[172] that will make their teams more competitive due to the possibility of using this type of investment. It is my belief, therefore, that the option will have to be progressively implemented, allowing the competitive realities not to be abruptly changed and, thus, giving time for sporting businesses have an adjustment period vis-à-vis the squads of professional teams, the financial strategy and its survey network of young athletes. Instead, if the decision-makers opt for an immediate ban, and as stated by Emanuel Macedo Medeiros, it would be 'a clash of biblical dimensions and would adversely condition the clubs where such practices exist'.[173]

It is well known that procedures governing sporting practices fall under the TFEU scope in so far as they engage in 'economic activity'. The CJEU has constantly said, in a large number of cases, that semi-professional and professional sport, in general, and football, in specific, comprises 'an economic activity' to which the Treaties apply.[174] The EC has, in fact, specifically and explicitly pointed out that 'the transfer of players in exchange for transfer fees comprises an economic activity'.[175] Therefore, it is precise that the activities threatened by FIFA's TPO ban, like the allocation of transfer payments and player transfers, as such, fall under the extent of the TFEU provisions.

---

[170] Regulations on the Status and Transfer of Players, Article 1.3.a, p.6.

[171] Premier League Rules & Regulations, season 2014/15, Rules U39–U40.

[172] For example, it is estimated that in Brazil's top division 90% of the players were subjected to a TPO agreement at the moment FIFA decided to ban the practice *in* Majithia P. (2014) "Third party ownership—a Brazilian perspective", LawInSport, at http://www.lawinsport.com/articles/employment- law/item/third-party-ownership-a-brazilian-perspective (31 March 2014).

[173] *Cf.* Emanuel Macedo Medeiros, former executive director of European Professional Football Leagues, in an interview given to 'A BOLA', a Portuguese renown newspaper in 29, March 2014.

[174] Case 13/76, Dona v. Mantero, E.C.R. 1976:115, para 12; URBSFA v. Bosman et al., E.C.R. 1995:463, para 73; Case C-519/04 P, Meca-Medina and Majcen v. Commission, E.C.R. 2006:492, para 22; Case C-325/08, Olympique Lyonnais SASP v. Bernard and Newcastle UFC, E.C.R. 2010:143, para 27.

[175] Commission, The EU and Sport, Annex I, sec 1., para 156.

More complex issues are whether specific provisions of the Treaty apply to FIFA and whether those provisions cover the TPO ban. Likewise CL&FFP regulations, TPO's agreements ban involve a lot of concerns regarding EU competition law, where three distinct EU legal foundations might be used to contest it. These three grounds may vary regarding which interested parties can raise claims pursuant to them. At first glance, third-party shareholders and clubs can and are expected to argue that the TPO ban restricts their freedom to do and pursue investments respectively, as guaranteed under the free movement of capital.[176] Secondly, football clubs and possibly players can claim that the TPO ban is breaching EU competition law since it obstructs intra-club rivalry on the player market.[177] Last but not least, TPO's shareholders can claim that FIFA, through the ban imposition, has abused its market position in order to exclude them from the player transfer market.[178]

Concerning CL&FFP regulations there are two particular modifications to the criteria launched by UEFA in 2012. These include the provisions set in Annex VI (E)(m)(ii)[179] and Annex VII (C)(5)(b).[180] The initial one incorporates a disclosure requirement in respect of Third-Party Ownership and the latter incorporates a minimum accounting requirement in respect of a disposal of rights to a TPO. Interestingly, Annex VII, (C)(5)(b) appears to rule out a club to take advantage of selling part of a current players' economic rights for a payment and using that as additional revenue to BE. Note that such revenues can only be accounted for once the full and permanent transfer of the player has occurred. It appears that the single TPO approach available is when buying an athlete. That is because there is nothing in the latest set of licensing provisions which defines that a third party investor cannot buy, for example, 99% of the economic rights of a player with the club subsidising only 1%. This

---

[176] *Cf.*, e.g., KEA-CDES Report, 2013, *"The economic and legal aspects of transfers of players*", pp. 91-92.

[177] The Commission singles out 'rules regulating the transfer of athletes between clubs (except transfer windows)' as a type rule that 'represent a higher likelihood of problems concerning compliance with Articles 101 TFEU and/or 102 TFEU'. Commission (2007) The EU and Sport: Background and Context, Accompanying Document to the White Paper on Sport, SEC (2007) 93 para. 3.4.

[178] It has been suggested that the TPO ban could also constitute an obstacle to the free movement of workers. The reduction of capital available for player acquisition could effect player movement. *Cf.* Lindholm (2011), above nº163, pp. 201–203. However, such a claim would essentially overlap with the claim under free movement of capital and the the restriction is more remote.

[179] It states that 'players' economic rights (or similar) For any player for whom the economic rights or similar are not fully owned by the licence applicant, the name of the player and the percentage of economic rights or similar held by the licence applicant at the beginning of the period (or on acquisition of the registration) and at the end of the period must be disclosed.'

[180] It states that 'only direct costs of acquiring a player's registration can be capitalised. For accounting purposes, the carrying value of an individual player must not be revalued upwards, even though management may believe market value is higher than carrying value. In addition, whilst it is acknowledged that a licence applicant may be able to generate some value from the use and/or transfer of locally trained players, for accounting purposes costs relating to an applicant's own youth sector must not be included in the balance sheet – as only the cost of players purchased is to be capitalised.'

could result in that team only having to account 1%, for the worth of expenditure, in their CL&FFP submission.

Despite a first flash at a triumph in the CL&FFP case versus UEFA, with the Court of Brussels (first instance) asking for a preliminary ruling to the CJEU, this has proven to be an illusion. The CJEU declined to answer the issues of the Brussels Court while the provisory measures demanded by the judge were suspended, following a UEFA's appeal.[181] Nevertheless, the supra case regarding FIFA's TPO ban, also implicating UEFA and the Belgium federation, was expected to be addressed in front of the same Brussels Court, which had demonstrated to be very disposed in preventing UEFA's CL&FFP regulations. However, the final decision constituted good news for FIFA and another disappointment to the contestants.

The prospect of a suitable Bosman *bis repetita* is vanishing. In addition, the judgment of the Brussels Court aroused a lot of curiosity and it is definitely of relevance to all those who are keenly expecting to know whether FIFA's TPO ban will be considered well-suited, or not, with EU law.[182]

3. CL&FFP legal dispute

A famous players' agent - Mr Daniel Striani and others - who sued the rules of financial fair play imposed by UEFA to clubs, prepared the first legal challenge. Then, on 29 May 2015, the Brussels Court of First Instance publicised its earlier position on the matter. Various media conveyed the decision as an initial inclination to the victory of those who do not support the regulations.[183] The Brussels Court not only imposed internal measures inhibiting the implementation of the second stage of CL&FFP regulations - which aims to further limit the possibility of debt capacity performed by the clubs, by reducing the 'maximum permitted deficit' - but also made a reference of the dispute to the CJEU, for a preliminary ruling. However, a careful legal interpretation of the before mentioned judgment,

[181] C-299/15, Daniele Striani et. al. v Union européenne des Sociétés de Football Association (UEFA), Union Royale Belge des Sociétés de Football – Association (URBSFA), 16 Jul 2015, para.31.

[182] Antoine Duval, *"EU Law is not enough: Why FIFA's TPO ban survived its first challenge before the Brussels Court",* Asser International Sports Law Blog, 25 Aug 2015, reteieved from: http://www.asser.nl/SportsLaw/Blog/post/eu-law-is-not-enough-why-fifa-s-tpo-ban-survived-before-the-brussels-court1.

[183] *Cf. e.g.* "The Guardian", "The Independent" and "Daily Mail".

does challenge the widespread expectation of seeing the rules of CL&FFP evaluated under the EU legislation.

3.1. A potential legal fiction and the Brussels' Court Judgment

It all started when, in its decision, the Brussels Court stated that since the case at stake did not belong to the scope of its jurisdiction, declared incompetent to review the complaint lodged by the famous players' agent, Mr Daniel Striani, against the CL&FFP regulations. As UEFA had challenged the 'jurisdiction matter' pending the action, the Court had to assess whether the relevant international jurisdiction criteria were satisfied. In this case, it should be noted that when a dispute of European competition law is brought against an undertaking that is located in Switzerland, the jurisdiction regarding the courts of the various member states is assessed according to the Lugano II Convention, on jurisdiction, recognition and enforcement of judgments in civil and commercial matters.[184]

The major legal foundation is enshrined in Article 2 of the LC and states that the defendant should be prosecuted where it is domiciled. Since the CL&FFP regulations constitute a legal and financial mechanism issued by UEFA, the location of the event which gives rise to the dispute must be considered to be in Switzerland. Accordingly, in principle, the Swiss courts are the only ones empowered to deal with this cause of appeal and to reverse the inconvenience caused by the alleged anti-competitive nature of CL&FFP regulations.

However, we can identify a way of exception from Article 5º nº3 LC, which gives special territorial jurisdiction to the courts where 'the harmful event occurred or may occur'. This encompasses two different places - where the damage occurred - Belgium - and the place of the origin event - Switzerland.[185]

The article encompasses that the perpetrator ought be prosecuted, depending on the applicant's willingness, in the courts of any of these locations. Revisiting previous case law, this special prerogative in the jurisdiction choice requires the existence of particularly connecting factors between the dispute and the courts domiciled where the damage occurred, or may occur.[186]

Moreover, the Brussels Court of first instance did not have the same opinion as UEFA, which argued that the injuries presented by Mr Daniel Striani, were hypothetical and purely

---

[184] The Lugano Convention harmonized the rules on jurisdiction - in civil and commercial matters - and expanded the applicability of the Brussels I regulation (Council Regulation 44/2001). On one hand, it unified the relations between Member States of the EU and Norway, Iceland and Switzerland on the other.

[185] *See* e.g. Case C-352/13, Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Akzo Nobel NV and Others, E.C.R 2015:335, para. 38.

[186] Idem, para. 39; Case C-228/11, Melzer v MF Global UK Ltd., E.C.R 2013:305, para. 26.

speculative.[187] However, at the same time, it held that negative externalities are only an indirect consequence for those clubs who wish to join in European competitions, since neither the players nor the players' agents were directly affected by the rules. They could only be affected by indirect repercussions (players) and for very indirect damages (players' agents): 'neither the players nor the players' agents are addresses of the FFP. Subsequently, players could only suffer indirect harm and agents only 'very indirect' harm'.[188]

Using other terminology, since the CL&FFP regulations not directly affect Mr Daniel Striani, he lacks legitimacy to raise the issue of possible violation of EU competition law standards, before several Member States' courts.[189] This restrictive interpretation of the provision enshrined in Article 5º nº3 of the LC is in line with the CJEU legal doctrine.[190] In addition, the Court did not address the rest of the arguments of the other claimants who joined Mr Striani in the proceedings.

Despite identifying the Swiss courts as the only ones competent to assess the content of the dispute, the Brussels Court acceded to Striani's request when it asked for provisional measures, vis-à-vis preventing UEFA's implementation of the second stage of the FFP mechanism.[191]

Somehow remarkably, the Court made reference to Article 31º of the LC for this objective, which held that:

'The application may be made to the courts of a State bound by (the Lugano) Convention for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another State bound by this Convention have jurisdiction as to the substance of the matter'.[192]

---

[187] *Cf.* Tribunal de première instance francophone de Bruxelles, Section Civile – 2013/11524/A – pp. 18, 21-22.

[188] *Cf.* Tribunal de première instance francophone de Bruxelles, Section Civile – 2013/11524/A – p. 18: 'Que ni les joueurs, ni les agents de joueurs se sont donc visés. Que par conséquent, le préjudice qui pourrait en subir les joueurs ne peut être qu'indirect, et celui des agents de joueurs en quelque sorte 'doublement' indirect'.

[189] Tribunal de première instance francophone de Bruxelles, Section Civile – 2013/11524/A – p. 18 («Que par conséquent encore, l'article 5.3 ne peut fonder la compétences des juridictions belges et qu'il faut s'en tenir à la règle générale de l'article 2.1 qui renvoie aux tribunaux de l'Etat du défendeur, soit en l'espèce les juridictions suisses, pour juger du fond de l'affaire»).

[190] See e.g. Case C-228/11, 'Melzer v MF Global UK Ltd.', E.C.R 2013:305; Case C-352/13, 'Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Akzo Nobel NV et. al.', E.C.R 2015:335; Case 220/88, 'Dumez France SA and Tracoba SARL v Hessische Landesbank et.al.', E.C.R. 1990:8. While CJEU only shares legal guidance on the Brussels Convention and Brussels I and I bis Regulations, the case law is analogously applicable to the Lugano Convention (and is also very relevant when applying the LC).

[191] *See, i.e.,* the reduction of the so-called 'acceptable deviation' from 45 million euros to 30 million euros.

[192] Article 31 of the Lugano Convention.

The Court gave no explanation regarding neither the urgency of the facts, nor the necessity to assure that the statutory foundations laid down by Striani justified the application of the provisional measures, whose geographic area is circumscribe to the Belgian territory.[193]

The Brussels Court deliberated and a reference to a preliminary ruling was made to the CJEU consider. This reference of the case was another of Striani's claims at the start of the process and fundamentally questioned whether the CL&FFP rules, vis-à-vis its break-even requirement, violated European rules laid down in TFEU Articles 45, 56, 63, 101, 102.[194]

Therefore, the decision of the Court did not culminate in a failed attempt performed by Mr Daniel Striani. However, this victory seems to be just a merely pyrrhic one[195], given that UEFA has already appealed against the decision, which automatically suspends its effects: the interim measures and the preliminary ruling reference. UEFA may then proceed with the implementation of the second stage of the rules, as planned. It also seems implausible that the Brussels Court of Appeals would support the first instance decision.

Firstly, it seems inappropriate to invoke Article 31 LC to make the case for a preliminary ruling regarding the content of the provision and, in addition, by a court that does not even have jurisdiction to do so. Allegedly, it could be materialized in a violation of the objectives pursued by the LC. Secondly, the possibility of being declared provisional measures, based on Article 31 LC, is subject to a verification of a legal assumption - the existence of a causal link between the content of the measure and the territorial jurisdiction of the court that adopted the decision.[196] One may expect the Court will improve its justification. Otherwise, it contradicts itself following that it had already realised that the specific linking factors to take jurisdiction on the matter were missing.[197]

---

[193] C-261/90, Mario Reichert, Hans-Heinz Reichert and Ingeborg Kockler v Dresdner Bank AG, para. 34: 'The expression 'provisional, including protective, measures' (…) must therefore be understood as referring to measures which, in matters within the scope of the Convention, are intended to preserve a factual or legal situation so as to safeguard rights the recognition of which is sought elsewhere from the court having jurisdiction as to the substance of the matter'; Case C-391-95, Van Uden Maritime BV, trading as Van Uden Africa Line v Kommanditgesellschaft in Firma Deco-Line and Another, E.C.R. 1998:543, para. 38, 'The granting of this type of measure requires particular care on the part of the court in question and detailed knowledge of the actual circumstances in which the measures sought are to take effect'.

[194] Namely Articles 58- 63 of CL&FFP regulations.

[195] Oskar Van Maren*, "The Brussels Court judgment on Financial Fair Play: a futile attempt to pull off a Bosman. By Ben Van Rompuy",* Asser International Sports Law Blog, Asser Institute (6, July, 2015).

[196] C-391/95, Van Uden Maritime BV, trading as Van Uden Africa Line v Kommanditgesellschaft in Firma Deco-Line and Another, E.C.R. 1998:543, para. 40.

[197] *See*, supra note 151.

3.2. The European Commission: back on track?

The judgment of the Brussels Court puts the European Commission in an awkward position. Evidently, the Court was incapable of adequately protecting the rights of the complainant, as the Commission had argued when rejecting the complaint. If Mr Striani wanted to re-submit his complaint, it would be difficult for the Commission to argue once again that there is insufficient Union interest to conduct an investigation.

One may share the reasoning that the Brussels judgment put the EC in a difficult balancing position. If Striani wants to resubmit the complaint, the perspective is that it would be very difficult for the Commission to argue, once again, in the direction of no greater substance within EU's legislation to continue with the proceedings but the fact that the EC have failed to mention this last statutory provision may prove useful, if the Court would reject it for a second time. Instead, it still could argue that Striani lacks legitimate interest, as he is not directly affected by the alleged infringement.

In any case, it should be noted that it is not expected a consistent assessment of the CL&FFP regulations within the European Commission's status - a decision that needed to be a concise and imposing appraisal. The EC had constantly repeated its political support regarding the underlying legal foundations enshrined in UEFA's CL&FFP regulations. Indeed, in 2009, the Commission organized a conference related to this hot topic and three years later, then Commissioner for Competition Almunia, released a joint statement with UEFA president Michel Platini, emphasizing the idea that the CL&FFP regulations are 'consistent with the aims and objectives of European Union policy in the field of State Aid.[198]

In the interim, other civil litigation had been raised, with a group of Paris Saint-Germain supporters also challenging the CL&FFP regulations (in a French court, where any hearing has been yet listed for these proceedings).[199] The fans are reportedly suing the French football federation and the league 'to denounce the multiple infringements of European Union law caused by the UEFA break-even requirement'.[200]

---

[198] European Commission & UEFA, "Joint Statement", issued by Vice-President Joaquín Almunia and President Michel Platini, pp. 1-3. (21, March 2012).

[199] Andrew Smith, *"Financial Fair Play and the Striani complaint: Where are we now?"*, LawInSport, available at: http://www.lawinsport.com/articles/item/financial-fair-play-and-the-striani-complaint-where-are-we-now#references (17, February 2015).

[200] Associated Press, *'PSG fans suing over UEFA's financial fair play rule'*, ESPNFC, retrieved from: http://www.espnfc.com/paris-saint-germain/story/2260651/psg-fans-suing-over-uefas-financial-fair-play-rule (23 January, 2015).

To conclude, in spite of the ambiguous declarations, carefully written to jeopardize a suitable legal evaluation, the removal of the EC's backing would have been diplomatically uncomfortable. The probable result of the pending litigation is a continuing diplomatic commitment whereby UEFA adapts the regulations whether through improvements to the CL&FFP regulations themselves, or to their implementation. It should be noticed that this steps had already started when, following to the Brussels Court decision, on June 30th, UEFA proclaimed that its Executive Committee had ratified the 2015-18 UEFA CL&FFP Regulations. The improved regulations were drafted as an outcome of the discussion with the European Club Association through a dedicated UEFA-ECA working group, having present that 'the court's ruling post-dated by over four months the two days of submissions and legal argument made to the court in February, allowing time for UEFA to prepare a considered response'.[201] UEFA president Michel Platini, added that the amended regulations sustain the opportunity for football clubs to transfer from 'austerity to sustainable growth', by consenting European clubs to take UEFA's approval for a entitled "voluntary settlement" in which they would be permitted to move beyond the rigorous boundaries of the BE rule.[202] In addition, the adjustments and concessions would be applicable for clubs in countries where the market is considered to be structurally and economically deficient.[203]

I do not sympathize with the conclusion regarding the earlier decision of the Commission in this case. The anticipated reference for a preliminary ruling does not mean that the European Commission's position is affected in any way. Adequate jurisdictional protection does not necessarily imply that the national court must deal with the matter on its own. On the contrary, should the interpretation of EU law be necessary for the ruling, the CJUE has to get involved.

---

[201] Tom Serby of Anglia Ruskin University Law School, Cambridge, United Kingdom, "UEFA's Financial Fair Play Regulations: Brussels court refers the Striani complaint brought by Advocate Jean-Louis Dupont to the European Court of Justice for a preliminary ruling and imposes interim embargo on phase 2 of the Regulations", The International Resource to the Taxation of Sportsmen and Sportswomen, *in* Free, Sports and Taxation, available at: http://www.sportsandtaxation.com (1, Jul 2015).

[202] Rob Harris, *"UEFA relaxes Financial Fair Play rules as president Michel Platini aims to increase investment in European clubs",* retrieved from: http://www.dailymail.co.uk/sport/football/article-3144154/Michel-Platini-launches-tougher-Financial-Fair-Play-rules-UEFA-President-hopes-attract-investment-European clubs.html#ixzz43qbZQqda (first published: 30 June 2015 and last updated: 30, June 2015). *Cf. also,* Sport Business International**,** *"Uefa eases FFP regulations",* available at: http://www.sportbusiness.com/sport-news/uefa-eases-ffp-regulations (30, June 2015).

[203] *Id.*

4. Brief mention of Article 45 TFEU

Concerning TFEU's Article 45 it is written that workers must have freedom of movement within the European Union and that any agreement restricting their movement ought to be deemed void but, in addition, subject to certain limitations not applicable to our case.[204] According to the judgment in Bosman, 'provisions which preclude or deter a national of a Member State from leaving his country of origin to exercise their right to freedom of movement (...) constitute an obstacle to that freedom'.[205] The CJEU has confirmed on several occasions that 'professional sportsmen and semi-professionals are workers'.[206] Following this reasoning, any barrier to their movement is, as a general rule, considered void, except if vindicated by a lawful aim, as long as intrinsic and proportionate[207] to that legitimate aim, under the aegis of European law grounds.

Revisiting some relevant case law, we perceive by CJEU's decisions that it is implicit that particular barriers may be suitable where such a measure 'is objectively justified' and, in addition, if it does not 'go beyond what is necessary' for achieving the pursued objective.[208] The Court held that any rules that are likely to affect a freedom guaranteed by EU provisions needed to be cumulatively justified vis-à-vis by an objective of imperative requirements regarding the general public interest; suitable for achieving that objective; and accordingly proportionate.[209] In 'Gebhard v. Consiglio Dell'Ordine degli Avvocati e Procuratori di Mi', it remained an empirical question to answer as to whether the enforcement of CL&FFP mechanism would, in fact, limit free movement of workers.

Observes, therefore, to assess the compatibility of the CL&FFP rules in relation to European legislation and analyse whether the rules imposed by UEFA to clubs prohibit or condition, in any way, the free movement of workers. According to some experts in the field, it seems incoherent to assert that the possibility of banning the clubs to submit negative

---

[204] Article 45(3) TFEU stipulates limitations on the basis of public policy, public health or public security; Article 45(4) TFEU stipulates that the provisions of Article 45 are not to apply to employment in the public service generally. In fact, neither the first exemption nor the second suit here.

[205] Friedl Weiss and Clemens Kaupa, 2014, European Union Internal Market Law, Cambridge University Press, p.77.

[206] European Commission Staff Working Document, *"Sport and Free Movement"*, Accompanying document to the communication from the commission to the European Parliament, the Council the European Economic and Social Committee and the Committee of the Regions, Developing the European Dimension of Sport, 66/2, 2011), p.2.

[207] *Id,* p.3.

[208] Case C-176/96, Jyri Lehtonen and Castors Canada Dry Namur- Braine ASBL v Fedération Royale Belge des Societés de Basketball ASBL (FRBSB) ECR (2000) I-2681, paras. 51–60.

[209] *See generally*, Case C-55/94, Reinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano E.C.R. (1995) I-4165.

balance sheets in the long term restricts the free movement of workers more than a multinational company, when opting to adjust barriers on workers' movement.[210]

In addition, salary caps make it more challenging for professional athletes to transfer from one club to another due to salary caps and the presence of cap space as a requirement for employment (the difference between a club's actual payroll and the amount introduced by the salary cap mechanism). A club will be incapable of employing an athlete that is a free agent or whose team is disposed to exchange him or her, if that club has too little cap space.[211]

Salary caps may have an impact in player's movement, since this prerequisite did not formerly exist. For instance, assuming that Club X settles the transfer of Player Y to Club Z. However, because of the enforcement of a salary cap, the transfer is not longer permitted except Club Z can draft enough cap space. The principal means for Club Z to create additional cap space is to trade players presently under deal along with their wages. Player Y hired by Club Z thus becomes controlled by the cap space of Club X and other clubs, by the willingness of such clubs to transfer and sign in players, and, in some contexts, the interest of those players to be merchandise. That salary caps obstruct player movement reflects that many sporting activities implemented salary caps to lessen wage inflation that was perceived as linked to high-class player movement (e.g. throughout the institution of free agency).[212] The NBA offers a paradigm of in what way a salary cap may considerably have an impact in player's movement. The probability and accessibility of making cap space has turned a critical factor for where athletes work.[213]

This regulates clubs' schedules and numerous prearranged transfers have been stopped because of the institution of the salary cap, since the team that was alleged to purchase the player had deficient cap space.[214] Ultimately, practices in the NFL demonstrate that athletes with high salaries are more touched by the mechanism.[215]

---

[210] Flanagan, C.A., (2013) *"A tricky European fixture: an assessment of UEFA's Financial Fair Play regulations and their compatibility with EU law"*, The International Sports Law Journal, Vol.13 (1-2), p.154.

[211] Scott K. Foraker, (1985), "The National Basketball Association Salary Cap: an Antritrust Violation?" 59 S. Cal. L. Rev. 157 p.172.

[212] *Id*., p.158 and Part IV.C.

[213] The ESPN website application permits users to make hypothetical tranfers of NBA athletes and observe if they comply under the NBA's transfer regulations. (2016) Available at: http://espn.go.com/nba/tradeMachine.

[214] Daspin, D. Albert (1998) "Of Hoops, Labor Dupes and Antitrust Ally-Oops: Fouling Out the Salary Cap", Indiana Law Journal: Vol. 62 Iss. 1, Article 6, pp.104-105.

[215] *Cf.* Ari Nissim, above 147, p.267.

That a salary cap obstructs player movement is important in U.S. regulations as part of competition scrutiny.[216] Nonetheless, under E.U. law the impact on free movement establishes an impartial legal basis for questioning the legality of salary caps under Article 45 of the TFEU. The Court has also determined that Article 45 relates not only to public authorities acts, but also to movements by and among organizations and other remote entities if they run 'gainful employment in a collective manner'.[217] This comprises rules announced by sporting bodies.[218] Therefore, it is recognisable that Article 45 is related to the CL&FFP regulations and the pertinent legal issue turn out to be whether the regulations breach the freedom of movement for workers. The rules do not discriminate, straightforwardly or indirectly, on nationality grounds,[219] but that does not express that they are tolerable. Following the CJEU rationale, 'Provisions which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement (...) constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned'.[220]

Operating this examination in Bernard and in Bosman, the CJEU found that sporting provisions, turning employment of football athletes restricted upon the compensation of "training fees", constituted such a difficulty.[221]Additionally, in Lehtonen case, the CJEU established that regulations, restraining when basketball athletes might switch clubs, obstructed the free movement of workers'.[222] Revisiting this case law, the CL&FFP regulations 'preclude or deter' player movement to such a degree that it creates an illegitimate barrier to the freedom of movement of workers. Article 45 does not relate to domestic situations, implying that barriers to workers' movement inside a Member State do not fall within the scope of the ruling.[223] Nevertheless, the fact that the CL&FFP regulations operate

[216] John Mackey et al., Appellees, v. National Football League et al., Appellants, 543 F.2d 606 (8th Cir.1976).

[217] Article 45(4) TFEU: employment in 'public service' does not fall under Article 45 TFEU. Neverthless, this has been interpreted narrowly by the CJEU. *Cf.* Catherine Barnard, *"The Four Freadoms" in* The Substantive Law of the E.U., Oxford University Press (3d ed. 2010), pp.500-504.

[218] Case C-415/93, URBSFA v. Bosman, para.82-84 and Case 36/74, Walrave v. Union Cycliste Internationale paras.17-19.

[219] Article 45(2) TFEU.

[220] Case C-415/93, URBSFA v. Bosman, para.96.

[221] Case C-415/93, URBSFA v. Bosman, para.99-100 and Case C-325/08, Olympique Lyonnaise v. Bernard & Newcastle Utd, E.C.R. 2010:143, paras.33-37.

[222] Case C-176/96, Lehtonen v. Fédération Royale Beige des Sociétés de Basketball ASBL, E.C.R. 2000:201, para.49.

[223] Case 175/78, Regina v. Ann Saunders, 1979 E.C.R. 1129.

equally to trades of athletes between teams within the same Member State may be seen as inappropriate.

Whereas a challenge of the provisions should be grounded on their outcome on athletes' movement between teams in diverse Member States, the provisions are designed in such a way that their effects on movement might not be restricted to domestic situations[224].

5. Introduction to Article 101 TFEU

Any entity engaged in an economic activity is categorised as an undertaking, for the purposes of Article 101 and 102.[225] Article 101 TFEU encompasses an essencial device for monitoring anti-competitive dealings by cartels with the EU and it is directly applicable - it comprises a system of self-assessment in which the actors must know if they are in compliance with the rules. The legal provisions in this ruling are set forth in three disctintive clauses. The provision clause is set in paragraph 1; the nullity clause[226] in paragraph 2, and the exemption clause in paragraph 3 of the article.

In the sporting framework, Articles 101 and 102 TFEU stipulated that the sporting activities in issue fall under the scope of the Treaty, meaning that the provisions which control the conditions for entering in sports business sector need to comply with the criteria set in Articles 101 and 102 TFEU.

It has been assumed that domestic and international sporting associations, the teams that integrate them and independent players, can be considered to be 'undertakings'.[227] Sporting federations can also be considered as an 'association of undertakings'[228] or an 'association of associations of undertakings'.[229] Their provisions might constitute 'agreements or decisions,'[230] which could cause distortions of competition inside the relevant markets and

---

[224] *Id.*

[225] *Cf.* Case C-41/90 Klaus Höfner and Fritz Elser v Macrotron (1991) E.C.R I-1979, para. 21.

[226] Article 101(2) TFEU simply encompasses that agréments that breached Article 101(1) and have not been granted an exemption under Article 101(3), are automatically void and unenforceable regardless prior deision to that effect. See, Case 279706 CEPSA Estaciones de Servicio SA v. LV Tobar e Hijos SL, judgement of 11 September, 2008, para. 80.

[227] C-191/97 Christelle Deliège v. Ligue francophone de judo et. al., E.C.R. 2000 I-2549, paras. 56-57, Case T-193/02 Piau, E.C.R 2005 II-00209, paras. 69–72.

[228] Case T-193/02 Laurent Piau v. Commission, judgment of 26 January 2005, paras. 69-72.

[229] Commission Decision Case COMP/C.2-37.398, Joint selling of the commercial rights of the UEFA Champions League of 23 July 2003, para 106.

[230] Case T-193/02 Piau, para 75. *Cf.* Commission decision in COMP IV/37.806—ENIC/UEFA, para 26; *See also*, C-519/04 P Meca-Medina, para. 45.

disturb trade among Member States.[231] Nonetheless, Article 102 TFEU does not include the notion of 'association of undertakings' but affects the unilateral behaviours of dominant 'undertakings'. The CJEU has assumed that even though a sports federation like FIFA is not itself dynamic on a certain market, it could constitute an 'undertaking' regarding Article 102 TFEU to the point that it symbolises the willingness of its associates that are active on that market.[232] Moreover, when they involve themselves in economic activity, a monopolistic position is often engaged as the status of an undertaking in sporting associations. As an example, clubs participating in the same league might be considered collectively dominant concerning Article 102, as understood by the pertinent case law.[233] Trade between Member States will usually be affected due to the scope of application of the provisions implemented by international sporting organisations. Provisions of domestic sports associations normally affect just the territory of their particular country but according with the high level of internationalisation and free movement in professional sport, those provisions might too disturb trade amid the different Member States. The same could be stated in relation to the agreements between clubs associated to domestic and international federations.

[231] For more information about the topic see, 'Guidelines on the effect of trade concept contained in Articles 81 and 82 of the Treaty', OJ 2004 C 101/7.

[232] Case T-193/02 Piau, paras. 112 and 116.

[233] It is recognised, in the Commission Staff Working Document, Annex I, para 2.1.4, that: 'sports associations usually have practical monopolies in a given sport and may thus normally be considered dominant in the market of the organisation of sport events under Article [102] EC'.

5.1. Establishing the Relevant Market

Firstly, the relevant market must be described from its product, geographic and, if appropriate, temporal market.[234] In describing the product market, cross-elasticity of demand is examined in order to conclude the degree to which the goods or services provided are substitutable for other commodities or services from the consumer's perspective.[235] The extent of substitutability (or 'interchangeability') is centred upon a putative SSNIP[236] test that questions whether the undertaking's consumers would shift to prepared existing alternatives or suppliers, in reply to a minor but important non-transitory increase in price (5–10%) in the goods or services, with diferrent areas being studied. In case the level of change resulted in loss of trades and made the cost increase unprofitable, extra alternatives and areas are incorporated in the relevant market until the range of goods and geographic areas is such that relative prices' increases would turn lucrative.[237] From the supply side, defining the product market, cross-elasticity is quantified regarding the option for suppliers to change production to the relevant product (in reaction to its relative price rise) and retail it in the short period deprived of suffering substantial extra costs.

The wider the concept of the relevant product market, the less probable that the issue of dominance will be discovered. The undertakings facing inquiry will therefore always attempt to involve as many other suppliers and products into the concept as workable. In controlling the geographic market, simply the Member States in which the circumstances of trade are suitably standardised for the market to be deemed in its whole are considered and, in reverse, those Member States markets where different contexts of competition exist are exempted from the concept. The concept of relevant market is also significant in the cases regarding Article 101(1) when reflecting whether an agreement has a restrictive effect or distorts competition.

Articles 101 and 102 have a mutual feature that is, inter alia, a necessity to delimit the relevant market from both the product market and the geographic positions. Following the

---

[234] *Cf.* Commission Notice on the definition of relevant market for the purposes of EC competition law, OJ C 372, 9.12.1997, pp. 5–13.

[235] *See*, Case 27/76 United Brands that provides a good example of the application of product and geographic market test by the CJEU, in which cross-elasticity of demand and supply are analysed, to answer this question.

[236] Small but significant non-transitory increase in price.

[237] Commission Notice on the relevant market, supra note 234, para. 17.

usually recognised Stix-Hackl and Egger categorisation, three types can constitute the relevant product market for professional sport.[238]

The primary regards exploitation market in which federations and clubs exploit their accomplishments and commercial rights, for example, through sales of matchday revenue, broadcasting rights, merchandising and so forth. Following the exploitation market, the author recognises the contest market in which the final outcome - the sporting competition - is cooperatively shaped by the clubs, with athletes being the most significant element of production.[239] In order to successfully implement a competition, sporting governing bodies draft the provisions that control competition among contenders and provisions restraining entrance to competitions. Once in European football the competitions are open and they operate the promotion and relegation system, the market cannot be exactly distinguished according to leagues. The third type is the supply market that fundamentally encompasses the purchasing and selling of athletes by the teams. Interchangebility is commonly quite little in the primary two types of markets however it is likewise little when it occurs to the top athletes in the supply market. Furthermore, some experts in economics have prepared a valuable explanation of the organisation of sporting competition that differentiates concerning the product market, the labour market, and the capital market.[240] The product market in a sporting tournament encompasses structure of competition (playing provisions for the competition and its organisation), league structure (organisation and configuration of the league), and income.

The configuration of a labour market in a sporting tournament includes: player assignment to clubs, player fee and salary determination along with the size of the player inventory. The capital market configuration in a sporting tournament deals with the forms of ownership agreements. One absent aspect in this taxonomy is governance, i.e., the method that provisions and strategies are decided, and the extent of vertical incorporation.[241] In Piau case law, the provisions of the FIFA Players' Agents Regulations concerning to agent licensing criteria were contested on the grounds of Articles 101 and 102. The relevant market was considered to be 'the market affected by the rules in question', i.e., 'a market for the

---

[238] Stix-Hackl C., Egger A., (2002) *"Sports and competition law: a never-ending story?" in* European Competition Law Review 23, pp. 81–91.

[239] Trainers and physiotherapists are, for example, other factors considered.

[240] Borland J., (2009), *"The production of professional team sports", in* Andreff W., Szymanski S. (eds) Handbook on the economics of sport. Edward Elgar, Cheltenham, p. 23.

[241] *Id*., pp. 23-24.

provision of services where the buyers are players and clubs and the sellers are agents'.[242] In ENIC[243], the EC assessed the provision that forbidden ownership of several football clubs, regarding to which two or more teams joining in the same UEFA tournament cannot be straight or implicitly controlled by the same power or managed by the same individual. The ENIC possessed interests in six professional football clubs. It claimed that the relevant market is the one for capital financing in teams in Europe that is 'characterised on the demand side by football clubs seeking capital and/or investment and on the supply side by individuals or corporations interested in investing in a European football club. Football clubs are competing in this market for access to capital'.[244] Curiously, the relevant market definition, according to the CAS was, in this case[245], deemed to be 'the market for ownership interests in football clubs capable of taking part in UEFA competitions'.[246]

What was understood as the supply side by CAS was identified as the demand side of the market by ENIC and vice versa. On the supply side of the relevant market, following CAS, are the probable vendors of ownership stakes in football clubs.[247] Furthermore to the concept of the relevant market, ENIC also interpreted vis-à-vis the markets: for athletes, sponsorship, merchandising, media rights market and the market for gate receipts as the secondary markets.[248] The UEFA 'home and away' ruling in Lille/UEFA[249], in which each team must play its domestic matches at its own stadium, was disputed under Article 102 by the French Communauté Urbaine de Lille. Later, UEFA denied permitting the Belgian team (Excelsior Mouscron) to play its home game versus other French team (Metz) in Lille. The EC pondered that Lille was operating in the market for the renting of facilities, but it did not resolve the issue of whether UEFA was dominant in the market for controlling European football club tournaments.[250]

---

[242] Case T-193/02 Laurent Piau v. Commission, 2005, E.C.R II-0209, para. 112.

[243] Commission Decision in Case COMP IV/37.806—ENIC/UEFA.

[244] *Id.,* para. 10.

[245] Case CAS 98/200 AEK Athens and Slavia Prague v. UEFA of 20 August 1999.

[246] *Id*., para. 133.

[247] In point 135 of its arbitral award, CAS considered this narrow market to be the relevant market since: 'because of the peculiarities of the football sector, investment in football clubs does not appear to be interchangeable with investments in other businesses, or even in other leisure businesses'.

[248] Case COMP/37.806 ENIC/UEFA, para. 12.

[249] Case COMP/E3/36.85—Lille/UEFA [1999] unpublished decision of 3 December 1999 in Pijetlovic, K., 2015. "*EU Sports Law and Breakaway Leagues in Football"*, p.172.

[250] Commission Staff Working Document, Annex I, para. 2.2.1.2.

In 1998 Football World Cup the EC scrutinised the application of discriminatory matchday ticket sales deals by the local organising committee of the 1998 Football World Cup in France regarding non-French domiciled residents. The concrete outcome of such discrimination was to block the tremendous majority of customers outside the country admission to a substantial proportion of tickets for the decisive games. The relevant product market was drafted based on a descriptive assessment in the SSNIP test, and it was stated to cover just the market for the entry tickets for Football World Cup 1998 because of the small cross–elasticity of the demand side.[251] The relevant geographic market was assumed to encompass 'at least all countries within the EEA'.[252]

To sum up, the relevant market in terms of CL&FFP regulations are firstly professional football clubs since their financial monitoring is what UEFA is trying to fix with the regulations[253] and, secondly, professional football players. One should notice that if a club cannot purchase one professional athlete that it desires at the value it is willing to hire, it pursues another who fulfils its standards. It is unreasonable to define the substitutability on such circumstances because, contrasting identical features that arise from several factories, each player is unique.[254]

5.2. Does the implementation of the CL&FFP regulations by UEFA constitute a Decision, an Agreement of an Undertaking or an Association of Undertakings?

As the EC stated beforehand that UEFA joins directly in economic practices[255] and the Accompanying Document to White Paper on Sport added that 'organisational sporting rules (…) that determine the conditions for (…) clubs' to involve in sporting activity as an economic undertaking, are subject to scrutiny under the antitrust provisions of the Treaty[256], it seems coherent to assume that UEFA's CL&FFP regulations constitute an economy activity and, following, they should be evaluated under EU legislation because, as every new legal framework instrument, CL&FFP regulations has been exposed so some criticism.

[251] Case IV/36.888—1998 Football World Cup [2000] OJ 2000 L 5/55, paras. 66–74.

[252] *Id.,* para. 77.

[253] Jeppe Grunnet Mieritz & Einar Marsteen Helde, *"A legal and economic analysis of UEFA's Financial Fair Play Regulations' effect on the competition in European Football",* Copenhagen Business School, March 2014, p.26.

[254] Long, C.R., (2012-2013), "*Promoting Competition or Preventing it? A Competition Law Analysis of UEFA's Financial Fair Play Rules",* 23 Marq. Sports L. Rev. 75, p.87.

[255] Case 37398, Joint selling of the commercial rights of the UEFA Champions League, 2003 OJ L291/25 para. 106.

[256] Above nº130, p.36.

Subsequently, it is required to reflect whether UEFA is categorised precisely as an undertaking by itself or as an association of them. Possibly, UEFA might be categorised as both, concerning the exact activity that is being questioned – e.g., FIFA, the international upper governing body of world football industry, has been categorised as either on diverse occasions. FIFA was classified as a standalone undertaking when entering into agreements for broadcasting privileges, in one Commission ruling.[257]

In Piau v Commission of the European Communities, nevertheless, the Court categorised FIFA as an association of undertakings when a dispute arose regarding their player rules.[258] The rationale behind this was that FIFA was constituted of national confederations that are composed of undertakings themselves - clubs. Through applying the CL&FFP regulations, UEFA is working in an analogous method to FIFA legislating player guidelines. Consequently, in an environment of a legal dispute to these rules, a court would possibly keep Piau's reasoning and determine that UEFA is an association of undertakings. A disagreement to this assumption is that UEFA and its associates truly comprise a 'group economic unit'. If UEFA and its associates were categorised as a 'group economic unit' then they are not in conditions of contracting[259] or emanating a decision. Fruitlessly, in the U.S., the NFL used this counter-argument in contradiction of an accusation that their exclusive contract with Reebok breached the Sherman Act.[260] Nonetheless, the CJEU has understood this term far more restrictively than in the U.S. Under EU law, a 'group economic unit' only contemplates wholly owned subsidiaries that follow the directions of their parent, and do not have real autonomy to choose how to perform in the market.[261] UEFA is not included in this classification, and therefore competition law would concern to them as an association of undertakings.

Ultimately, the CL&FFP regulations would fall under both the concepts of an agreement or a decision. Either these definitions have been given a wide interpretation by the

---

[257] Case IV/33384 Distribution of Package Tours During the 1990 World Cup [1992] OJ L326/31, paras. 47-49.

[258] Case Piau v Commission of the European Communities, paras. 71-72.

[259] Joanna Goyder and Albertina Albors-Llorens Goyder's EC Competition Law (5th ed, Oxford University Press, New York, 2009) at p.80.

[260] American Needle Inc v National Football League 560 US 183 (2010). This judgement regarded the NFL's exclusive licensing agreement with Reebok. American Needle claimed that this agreement encompassed a conspiracy to restrict other sellers' ability to obtain licences for each individual club's intellectual property (in their logos and trademarks). The Court of Appeals for the Seventh Circuit accepted the NFL's argument that the NFL clubs were a single entity and might not have conspired to restrict deals. However, the Supreme Court did not agree with this position, and at the same time held that each NFL club is an individual entity with distinctive objectives.

[261] Case C-73- 95P Viho Europe v Commission [1996] E.C.R. I-5457. *Cf.* also supra note 257.

judges.[262] In addition, the apparent environment of sporting rules and commercial contracts turn them easy to fall under these concepts.[263] Simon Gardiner and others have provided guidance on determining the eventual classification of sporting regulations:

In case of the direct outcome of an arrangement between the body and, for instance, professional teams, tournament managers and individual athletes, that would be probable to be deemed as an agreement; while if the ruling were ratified by a sports federation under power conceded to it by its associates, then this would likely be characterised as a decision of an association of undertakings.

The EC has established in a previous judgment that the supra UEFA's provisions was an emanation of UEFA since the UEFA Executive Committee drafted it.[264] The UEFA Executive Committee also approved the CL&FFP rules, and they were implemented under power granted by its associates. Accordingly, the enactment of these rules would be deemed as a UEFA's decision[265] as CL&FFP appears to be a horizontal agreement between providers of sports services – clubs, which comprises obligations to control spending – vis-à-vis players' salaries while it is also supported by vertical restraints - licensing criteria – enforced by the upper governing body.[266]

5.3. Will the trade between Member States be affected by CL&FFP regulations?

In order to fall under Article 101(1) TFEU, an agreement between undertakings may also 'affect trade between the Member States'.[267] The decision in 1996 case law, Société Technique Minière v Maschinenbau Ulm, clearly presented this element when the CJEU held that:

---

[262] *Cf.* Goyder and Albors-Llorens, above n 257, p. 97.

[263] Simon Gardiner and others Sports Law (4th ed, Routledge, New York, 2012), p.178.

[264] *Id.,* p.178.

[265] With UEFA sponsoring the provisions, the ECA representing the clubs and EPFL representing the national associations and FIFPro Europe representing the players it is clear that these undertakings 'have expressed their joint intention to conduct themselves on the European Football Market in a specific way', *in* Case T-7/89, SA Hercules Chem. NV v. Commission, 1991 E.C.R. II-1711, para. 256.

[266] Weatheril S., *"The legally ambiguous status of 'Financial Fair Play'",* published at the website "Soccernomics", available at http://www.soccernomics-agency.com/?p=469;

[267] Article 101(1) TFEU.

'It must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or of fact that the agreement in question may have an influence, direct or indirect, actual or potential, on the pattern of trade between member states'[268].

At first glance, it is controversial that services related to football industry are somewhat that is transacted between member states. Trade is stated widely, and it is not restricted to simple production and supplier relations, but comprises all abroad economic activity.[269] AG Lenz's opinion in Case URBSFA v Bosman indicated that football athletes running among Member States, determines trade[270]. In addition, within the E.U, football athletes are frequently dealt across several different leagues in several states. Therefore, soccer-playing services are merchandised within member states. Moreover, it is probable that the CL&FFP rules will touch this inter-state business. As the BE prerequisite in the guidelines has a salary cap tendency, football clubs must respect a stipulated threshold consigned on their budget expenses.

Consequently, there will probably exist cases where a team cannot proceed with a deal, as the increased cost would provoke a violation of the BE clause. The NBA offers guidance that a salary cap mechanism restricts athletes trade. There, numerous prearranged deals have flopped because of their deficient space under a clubs' salary cap.[271] Analogous circumstances are probable to occur under the CL&FFP rules, and therefore they are possible to undertake an effect on the hypothetical configuration of trade among the different member states.

Last but not least, this essential factor demands that the influence on trade must be appreciable.[272] A significant element regarding this examination is the market place of the undertakings affected.[273] The EC held a rebuttable presumption concerning agreements that will not substantially influence trade.[274] This occurs where the market position of the

---

[268] *See*, Case 56/65 Société Technique Minière v Maschinenbau Ulm [1966] E.C.R. 234, para. 249.

[269] Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty [2004] OJ C101/81 para. 19.

[270] *Cf.* URBSFA v Bosman, above n 76, paras. 260-261.

[271] Jeffrey Levine (1992),*"The Legality and Efficacy of the National Basketball Association Salary Cap",* 11 Cardozo Arts & Ent. L. J. 71, pp. 91-92.

[272] Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty.

[273] *Id.,* para. 45.

[274] *Id.,* para. 52.

pertinent parties within the society is fewer than 5%, and business flow of those ones is less than €40m[275].

UEFA seem to run as a real monopoly when administrating the functioning of European professional soccer, having a far larger market share than the stated one. Additionally, most clubs will adhere to these provisions, as already mentioned before and, therefore, it is probable that the effect on inter-state business would be appreciable.

5.4. Do the CL&FFP object or effect pursue the restriction of competition?

Within this topic, the meanings 'object or effect' should be considered alternative, instead of being interpreted as cumulative requirements.[276] While considering this factor, the leading pace to do is to reflect whether the object of the agreement is a foe of competition. Once this is proved, it is useless to continue to scrutinise the influence of the agreement.[277] Article 101(1) TFEU determines examples of agreements that are liable to restrict competition, in order to help the interpretation of this element.

They encompass: (a) directly or indirectly fix purchase or selling prices or any other trading conditions; (b) limit or control production, markets, technical development, or investment; (c) share markets or sources of supply; (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.[278]

Concerning the object study, when defining whether the CL&FFP rules have the 'object' of damaging competition, a court will inspect the objective inference and the aim of the arrangement regarding the economic environment in which it will be involved.[279] It should be reminded that one of the major aims of the CL&FFP issued by UEFA is to reduce impact on salaries and transfer fees and restrict inflationary outcome. UEFA drafted the BE rule for achieving this goal of placing a limit on the amount each team is able to spend on

---

[275] European Commission Memo on Antitrust: Commission adopts revised safe harbours for minor agreements ("De Minimis Notice") and provides guidance on "by object" restrictions of competition - Frequently asked questions, (Brussels, 25 June 2014).

[276] Case Société Technique Minière v Maschinenbau Ulm, supra note 266, para. 249.

[277] *Id.*

[278] Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, supra note 268, para. 44.

[279] Case T-148/89 Trefilunion v Commission of the European Communities [1995] E.C.R II-1063, para.79.

athletes wages. This aim, joint with the use of the BE provision, presents the CL&FFP rules the look of a price fixing business. Price fixing is one of the exemples of an anticompetitive effect enshrined in Article 101(1)(a) TFEU[280] and is frequently considered as partaking the object of restricting competition.[281] European courts have stated price fixing comprises whichever dealing that directly or indirectly limits price competition.[282] They are perceived as 'hardcore restrictions' and they did not benefit from the safe-harbours.[283] The CL&FFP rules seem to fall under this meaning once the limit on spending in the BE provision can be understood as a maximum amount instrument that restricts the capability of teams to compete for athletes on cost basis.

Moreover, other academics have claimed that salary caps 'by its very nature has the object of distorting and restricting competition'.[284] Consequently, as the provisions seem to work as a price fixing procedure, and they have the explicit purpose of lessening pressure on players' wages, they seem to encompass an anti-competitive object. Indeed, there are who consider that price fixing arrangements suppress price competition more than the CL&FFP regulations (e.g. if clubs approved to a 'player salary cap' then a club would not be able to strive for a player on value beyond the capped level.

Nevertheless, under the CL&FFP regulations, the limit is not as strict and there is possibility for a club to transfer other players to allow them to make a better proposal.[285] Sometimes, in some doubtful judgements of price fixing, a court will determine that an agreement does not comprise an anti-competitive object, and in its place leans on the anti-competitive effect of the dealing.[286]

In assessing the effect study, it is necessary to determine what panorama would exist deprived of the CL&FFP regulations, and balance this to the state of affairs since the

---

[280] Article 101(1)(a) TFEU.

[281] *For more info about the topic see* Richard Whish & David Bailey Competition Law (7th ed, Oxford University Press, New York, 2012: a) Chpater 13) pp. 512-552 for horizontal arrangements and Chapter 16 pp. 617-672 for vertical ones.

[282] *Id.,* pp. 506-508, with one example being setting maximum prices like in Case IV/400 Agreement between European Glass Manufacturers [1974] OJ L160/1.

[283] European Commission Memo on Antitrust: Commission adopts revised safe harbours for minor agreements ("De Minimis Notice") and provides guidance on "by object" restrictions of competition - Frequently asked questions, (Brussels, 25 June 2014).

[284] Leanne O'Leary, *"Price-fixing Between Horizontal Competitors in the English Super League"* (2008 ISLJ 77) *in* International Sports Law Journal 2008/3-4, p.79

[285] Jemson, T.J., 2013 *"For the Love of Money, Football, and Competition Law: An analysis whether UEFA's Financial Fair Play breach European competition law",* University of Otago, p.19.

[286] *More info in* Frankel, A.S. & Shampine, A.L., 2006. "*The economic effects of interchange fees"*, Antitrust Law Journal, 73(3), pp. 627–673. *See also,* Case 29373 Visa International - Multilateral Interchange Fee [2002] OJ L318/17 paras. 64-69.

implementation of the mechanism.[287] Prominently for the CL&FFP regulations, this element can be met based on probable anticompetitive effects, notwithstanding the anti-competitive effects are still to arise.[288] Therefore, a court might still determine that the CL&FFP regulations breach Article 101(1), albeit the precise effect of the regulations may remain unclear. Economic studies concerning 'relative' salary caps analogous to the CL&FFP regulations advocates that these kind of caps do decrease overall salary expenditure and thus partake an anticompetitive effect.[289] For example, if the CL&FFP regulations had been enacted in the EPL for the 2009/2010 season, wage to turnover ratios would have dropped by as much as 15%.[290] Positively, there are some signals that football clubs are altering their conduct in reaction to the implementation of the CL&FFP regulations. Consequently, although a court did not acknowledge that the object of CL&FFP is to be a foe competition, the effect of it evidently makes just that.

Moreover, the CL&FFP regulations might comprise the anticompetitive effect of restraining investment.

There is no necessity to show its adverse effects on competition, when the anti-competitive object of the agreement is recognised. The spirit of law of this article is very wide once no actual and direct effect on trade is compulsory and *prima facie* any prepared arrangement could fall under this clause.

5.4.1 De minimis doctrine and CL&FFP regulations

As mentioned above, the regulations held a cap on how much money through equity injections from wealthy owners or related parties can be considered for the purpose of BE rule. Accordingly, the provisions have an impact on the amount of money that some participants are able to put into a club. It should be added that there are some exemptions within the scope of this rule.[291]

---

[287] Case Société Technique Minière v Maschinenbau Ulm, supra note 274, p. 249.

[288] Guidelines on the application of Article 81(3) of the Treaty [2004] OJ C101/97 p. 24.

[289] Helmut Dietl and others "*Welfare Effects of Salary Caps in Sports Leagues with Win-Maximizing Clubs"*, supra note 43, pp. 6-7.

[290] See generally, supra note 135, "*Vertical restrainsts in soccer*" where Peeters and Szymanski have conducted research into the effects of the CL&FFP provisions which indicates that there is evidence that clubs are actually changing their behaviour in response to the enforcement of the CL&FFP instrument, p.28.

[291] There are also, i.e., the ancillary restraints - namely the restrictions on competition that are directly related and objectively necessary for the implementation of the main, non-restrictive transaction and are proportionate to it', do not also fall under the prohibition clause and the

Initially, these statutory concessions are mainly for those agreements that have an impact on competition, by effect.[292] Some of them are considered inoffensive and consequently cannot be assessed under Article 101(1) of the TFEU since they do not pursue an 'appreciable impact' on trade among Member States.[293] However, to qualify these restrictions in light of Article 101(1) TFEU, they need to comply with another prerequisite.

The *de minimis* doctrine has been developed by the courts to stop them having to undertake with decisions or agreements that are of quite trivial significance.[294]

The doctrine stipulates that an agreement or decision will deem to fall outside the scope of Article 101(1) except if its effect on competition or interstate business flow is 'appreciable'.[295] Using another terminology, an agreement that has a quite minor impact on the market will not violate Article 101(1). The EC has issued regulation on the de *minimis* doctrine to assist consider when somewhat falls under Article 101(1).[296] This suggests that a decision is not deemed irrelevant where the parties implicated collectively have 10% (or more) of the relevant market.[297] While these instructions are useful, this investigation should not be guided in a merely quantitative approach. There might appear cases where the market share of undertakings is less than the latter, however the effect on trade is still deemed appreciable,[298] and the reverse as well.[299]

The EC updated the previous *de minimis* communication provided in 2001 for two principal motives. Primary, it required modernisation towards the progresses in the case law and specifically the CJEU's ruling in the Expedia decision. Therefore, the CJEU enlightened that 'anticompetitive agreements by object cannot be considered as minor, because they have by definition an appreciable impact on competition. As a result, such agreements cannot benefit from a safe harbour'.[300] The necessity to harmonise the scope of the Notice with other

---

judicially created Wouters exceptions. *Cf.* Pijetlovic, K., 2015. *"EU Competition Law and Sport"*, EU Sports Law and Breakaway Leagues in Football, ASSER International Sports Law Series, Springer, Chapter 5, p.151.

[292] *Id.,* p.152.

[293] *Ibid.*, p.153.

[294] Article 101(1)(b) TFEU.

[295] This doctrine was firstly drafted in Case 5/69 Völk v Vervaecke, E.C.R. 1969:35.

[296] Commission Notice on agreements of minor importance, which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis) [2001] OJ C368/07.

[297] Richard Whish & David Bailey, Competition Law (7th ed, Oxford University Press, New York, 2012: a) Chpater 3), pp. 141-150.

[298] *Id.,* pp. 141-142.

[299] *Cf.,* generally, Case 37576 UEFA's Broadcasting Regulations [2001] OJ L171/12 and Article 101(1)(b) TFEU.

[300] Case C-226/11 Expedia Inc. v Autorité de la concurrence and Others, E.C.R. 2012:795, Judgment of the Court (Second Chamber) of 13 December 2012. In this decision the Court stated that 'an agreement that may affect trade between Member States and that has an anti-

EU antitrust provisions implemented after 2001, was another motive for the revision of the 2001 De Minimis Notice. The updated Notice guarantees full alignment with, particularly, the Vertical and Horizontal Block Exemption Regulations, providing further clarity to stakeholders.[301] EC's knowledge with the enforcement of the *de minimis* doctrine Notice in 2001 has been very positive and the several stakeholders supported this. Consequently, the methodology and the provisions hold in that Notice is preserved, with little novelties. Following, agreements that have as their object an impact on competition, vis-à-vis the prevention, restriction or distortion of competition within the Single Market, do not fall under the Notice's safe-harbours. [302]

Moreover, unlike the Commission's Notice which listed specific 'by object' or 'hardcore' restrictions that did not benefit from the safe harbours, the 2014 Notice held that the EC will not provide the 'safe harbours' to agreements encompassing any restriction 'by object' or any of the restrictions that are registered as "hardcore restrictions" in existing or upcoming Commission block exemption regulations. It is explained, in that framework, that 'hardcore restrictions' are deemed to usually establish restrictions by object, according to the Commission. Last but not least, the 2014 Notice no longer encompasses clarifications on "effect on trade" since in 2004; the EC provided detailed instructions on this matter, as already seen beforehand[303].

The first restriction on competition resulting from the limitation on expenditure is liable to affect competition in an appreciable way. Following the above rationale, UEFA held a dominant position in their marketplace and they do not comply with the 10% comfort zone. In addition, the rules are prospective to touch a majority of teams[304] and this, combined with the statistic the majority of clubs are probable to try to obey with the provisions, indicates that the impact on competition will be appreciable.

Nevertheless, the restriction of competition done by restraining financing can be a distinctive situation. Although UEFA possess a dominant market stake, this constraint may

---

competitive object constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction on competition'.

[301] European Commission Press Release Database, Antitrust: Commission adopts revised competition rules for vertical agreements: frequently asked questions, Brussels, 20 April 2010.

[302] European Commission Memo on Antitrust: Commission adopts revised safe harbours for minor agreements ("De Minimis Notice") and provides guidance on "by object" restrictions of competition - Frequently asked questions, (Brussels, 25 June 2014).

[303] *Id.*

[304] The European Club Licensing Benchmarking Report Financial Year 2011, p.15.

only have a minor impact. The rules just constraint backers who are injecting money just to provide the finances that the club needs. Financial backers can still provide in other sectors such as club facilities or youth development systems, as already seen before. Also, this limit of financing perhaps does not operate to a broad range of individuals. The 'acceptable deviation' rule originally permits for €30m of money by equity owners. Therefore, the only persons touched will be those who are expecting to bankroll a club's remuneration expenditure on a big dimension. This will not have a great impact on the general sporting industry, given this is simply probable to influence a small number of financiers, and there are numerous in the sporting market.[305]

Consequently, if this was the single competition constraint, it might not be sufficient to hold a dispute under Article 101(1) TFEU. *Ipso modo*, the supra analysis proposes that UEFA CL&FFP mechanism comprise a decision of an association of undertakings which have the effect of appreciably restricting competition and thus encompass a breach of Article 101(1) TFEU[306].

[305] CAS 98/200 A.E.K Athens and S.K. Slavia Prague/UEFA (Court of Arbitration for Sport, 20 August 1999) para. 106.

[306] Jemson, T.J., 2013 *"For the Love of Money, Football, and Competition Law: An analysis whether UEFA's Financial Fair Play breach European competition law"*, University of Otago, p.22.

Part III. General Conclusions and Outline od the Possible Justifications

1. Outline of the possible justifications

Regarding the purpose of this piece of research, it will now be analysed if any justifications can be applied into the CL&FFP regulations in order to avert a statement that they are void.[307]

The main purpose of this chapter is to scrutinise whether either the statutory concession enshrined in Article 101(3) of the TFEU or the judicially drafted *Wouters* exception, apply to the CL&FFP regulations. The UEFA regulations will not infringe Article 101(1) if either of these exceptions applies. Following, it seems coherent to illustrate the main disparities amid these two statutory concessions. The so-called Wouters exception permits to compare non-competition aims against impacts in competition, and determine that the first overrule the second.[308] Furthermore, it can be argued that the provisions are not deemed to have an impact on competition incompatible with the common market, even if they would otherwise restrict it.[309] When this happens, there is no breach of Article 101(1) TFEU since the final element - whether the agreement has the object or effect of restricting competition - is not fulfilled.

In addition to the *Wouters* judicially drafted exception, we find Article 101(3) of the TFEU, which is a competition legal exception. The trust of Article 101(3) is considering and matching the pro and anti-competitive impacts of the behaviour at stake, and concluding whether it is cost-effectively advantageous to consent the behaviour, notwithstanding its anti-competitive effects.[310] Where behaviours like an agreement, a decision or a concerted practice fulfils the criteria of Article 101(3), that Article stipulates that the agreement or decision in issue might be exempted from Article 101(1).

2. The *Wouters* exception

In *Wouters* Case, the CJEU initiated its judicially created exemption, considered by Wish as a 'regulatory ancillarity'[311] and by Monti as a 'European-style rule of reason'.[312] The

---

[307] Article 101(2) TFEU.

[308] *See*, Richard Wish & David Bailey, Competition Law, Oxford University Press, 7th edition, 2012, Chapter 3, pp. 130-131.

[309] *Id.*

[310] Commission Notice, Guidelines on the application of Article 81(3) of the Treaty, (2004/C 101/08), para.11.

[311] *See*, Richard Wish & David Bailey, supra note 308.

decision does not actually represent the full picture regarding Article 101(1) legal framework, since the assessment of the positive and anti-competitive outcomes of restrictions comprises economic altercations on both sides. Instead, *Wouters* presents the evaluation of the EU's competition law aims versus the non-economic public interests that might, or not, be deemed as a part of the EU's goals in other fields.[313] The *Wouters* test was confirmed in the sporting case of *Meca-Medina*.[314]

In relation to the justification of anti-competitive agreements under Article 101 TFEU, the CJEU in Wouters adopted a procedure that is rather similar to the Gebhard test.[315] In that case, the CJEU found that an anti-competitive agreement does not fall under the prohibition laid down in Article 101(1) TFEU when it is necessary to achieve a legitimate objectives[316] and 'whether the consequential effects restrictive of competition are inherent in the pursuit oh those objectives and are proportionate to them'.[317]

Therefore, following Meca-Medina and its predecessor Wouters, we are left with a significant number of problems in applying it to the CL&FFP - predominantly as regards the contentious BE requirement and the TPO ban - in order that it may establish itself as not contravening Article 101 TFEU, and therefore not constituting an illegal restriction on competition.[318] In addition, it should be analysed whether the CL&FFP pursue legitimate objectives, if the restrictions imposed are inherent to pursue the final goal of financial sustainability within European football clubs and if the provision are proportionate to accomplish it.[319]

---

[312] *Cf.* Giorgio Monti**,** *'Article 81 EC and Public Policy', Common Market Law Review 39*, Issue 5, 2002, pp. 1087-1088.

[313] *Cf.* Pijetlovic, K., *"EU Competition Law and Sport"*, EU Sports Law and Breakaway Leagues in Football, ASSER International Sports Law Series, Springer, Chapter 5, 2015, p.154.

[314] As mentioned before in Chpater II - 1.

[315] Case C-55/94, Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano, E.C.R. 1995:411, para. 37.

[316] *Cf.,* Case C-309/99, Wouters et al. v. Algemene Raad van de Nederlandse Orde van Advocaten, E.C.R. 2002:98, para. 97.

[317] Case C-519/04 P, David Meca-Medina and Igor Majcen v Commission para. 42.

[318] Lindholm, J., *"Can I please have a slice of Ronaldo? The legality of FIFA's ban on third-party ownership under European union law".* The International Sports Law Journal, 15(3), 2015, p.143.

[319] Jemson, T.J., 2013, *"For the Love of Money, Football, and Competition Law: An analysis whether UEFA's Financial Fair Play breach European competition law",* University of Otago, pp. 26-28.

2.1 The legitimate objectives of CL&FFP regulations

The key objetive of UEFA's CL&FFP regulations is to guarantee the longstanding financial sustainability within the European football industry. It is fitting to scrutinise the framework around the implementation of the mechanism in order to define whether this comprise a legitimate objective.[320] UEFA introduced the FFP regulations due to concern over the financial behaviour of football clubs.

As before mentioned in the introduction of this piece of research, in 2011, a significant number of clubs competing in the European top football divisions were making losses and recording negative equity year after year. However, even in the perspective of dangerous financial performance, some might claim that the purpose of financial sustainability is not a legitimate objective. In common dealing, companies would have autonomy and sovereignty to administer their own financial activities, even if they were running affairs in a dangerous way. The rationale behinds this is that it is not the function of a governing body to prevent an enterprise from jeopardizing itself. However, this argument appears inconsistent since it does not take into account the special characteristics inherent to sporting activities and disregards the fact that European football clubs are distinctly perceived from other business industries.[321] Moreover, the CJEU ruling in Meca-Medina advocates that sporting rules' legitimate objectives are generally attached to the "organisational and proper conduct of competitive sport'.[322] This framework might support UEFA's position when claiming that in order for the organisation of a sports competition to run efficiently, it is necessary to ensure that a football club competes the entire season.[323]

Furthermore, following Van Maren and others reasoning, it should also be noticed that the total top division club losses were found to be €1.1 billion in 2012, which corresponds to an 8% loss margin. In spite of the clubs still made losses, the final result 'is €600m less compared to the €1.7bn in 2011'.[324] The balance between club assets and liabilities has also

---

[320] Cf., Case C-519/04 P, David Meca-Medina and Igor Majcen v Commission, para. 42. Case Wouters and others v. Algemene Raad van de Nederlandse Orde van Advocaten, paras. 97 and 108.

[321] *See*, supra note 319.

[322] Case C-519/04 P, David Meca-Medina and Igor Majcen v Commission paras. 45-46.

[323] Davies, C., *"The Financial Crisis in the English Premier League: is a Salary Cap the Answer?",* European Competition Law Review, 31 (11), 2010, p. 447.

[324] Frédérique Faut, Giandonato Marino and Oskar van Maren, *"Five Years UEFA Club Licensing Benchmarking Report – A Report on the Reports"*, ASSER International Sports Law Blog (25 April, 2014) retrived from: http://www.asser.nl/SportsLaw/Blog/post/five-years-uefa-club-licensing-benchmarking-report-a-report-on-the-reports-by-frederique-faut-giandonato-marino-and-oskar-van-maren (last consulted, 16 Jan, 2016).

improved considerably, with club net assets increasing by 50% over the first three years of FFP-BE provisions while the club net debt has decreased by more than €1bn.[325] The CL&FFP system has stimulated owner financing in assets.[326] Club balance sheet net assets have increased in the last three years with FFP encouraging owner investments - club balance sheet assets now exceed all debts and liabilities by €4.9bn.[327] UEFA Head of CL&FFP, Andrea Traverso, annouced that 'for the first time, Europe's clubs are individually ranked in a series of top-20 lists, covering TV money, gate receipts, UEFA prize money, wages, other operating costs, underlying operating and 'bottom-line' net profitability, stadium assets, squad costs and transfer incomes and spend'.[328]

Additionally, the EC appears to reinforce the objectives behind CL&FFP. The Accompanying Document to the White Paper on Sport and the UEFA Joint Statement with the European Commission on the CL&FFP regulation seems to reinforce this objective, as already stated. Consequently, in this author's opinion, a court will determine that the CL&FFP regulations pursue a legitimate aim when trying to achieve the long-term financial sustainability of European football clubs.

2.2 The CL&FFP regulations *indispensable* restrictions

Regarding this issue, the court must determine whether the anti-competitive impact on the amount that a club is able to expend in a player's salary is inherent in attaining the purpose of long-term financial sustainability within the European football industry. The Accompanying Document to the White Paper on Sport offers regulation on this. Nevertheless, the restriction here at stake is not as elementary as determining that the provision limiting each half to 45 minutes and a game to 90 minutes is 'inherent in the organisation and proper conduct of competitive sport'.[329]

In *Meca-Medina,* the CJEU determined that the impact on competition of the anti-doping sanctions were 'inherent for the proper conduct of competitive sport and the healthy

---

[325] UEFA, *'The European Club Footballing Landscape'*, Club Licensing Report, Financial Year 2014, p.7 and p.114.

[326] *Id*.

[327] UEFA, *'Licensed to thrill'*, Benchmarking Reporto n the clubs qualified and licensed to compete in the UEFA competition season 2013/2014, pp. 8-10.

[328] UEFA, *"Seventh club licensing benchmarking report",* Protecting the game, 21 October 2015, retrieved from: http://www.uefa.org/protecting-the-game/club-licensing-and-financial-fair-play/news/newsid=2295968.html. (last consulted 16 Jan, 2016).

[329] Commission of the European Communities, White Paper on Sport, COM(2007) 391 final (11, July 2007), p. 18.

rivalry of athletes'.[330] Analogously, the EC established that the prohibitive clause on the 'ownership of two or more sports clubs that were competing in the same UEFA competition was inherent for ensuring the uncertainty of results'.[331]

It seems clear that if the main objective is to achieve long-term financial sustainability of European football clubs, in an industry characterized by dangerous financial practices, then reasonably there will require to exist restrictions targeted on the financial behaviour of European football clubs. This assumption does not seem to be any further polemic then stating that anti-doping sanctions are required to guarantee that rivalry among competitors is impartial.

A mechanism that might actually monitors the clubs' finances without capping the amount that a club is willing to pay, could be another possible approach to the matter. Nonetheless, as is added following in this piece of research, these alternative solutions are not satisfactory to pursue financial sustainability objective.[332]

Accordingly, a court would probably determine that the restrictions on expenditure side in the CL&FFP regulations are inherent in attaining the main purpose of accomplishing financial sustainability within the European football industry.

2.3 The *proportionality* of CL&FFP regulations

The last phase of the Wouters exception encompasses an analysis of the proportionality principle policy, within EU law.[333]

The EC, in its White Paper on Sport stipulates that 'the sporting rule must also be proportionate in relation to its objective in order for it not to infringe Articles 101(1) and 102 TFEU and must be applied in a transparent, objective and non-discriminatory manner'.[334] This also comprises a binding legal framework for the scrutiny of sporting policies regarding domestic market rules. The issue, at this point of the research, is to determine whether there are any other possible - and less limiting – procedures, which are skilful for attaining the

---

[330] Case C-519/04 P, David Meca-Medina and Igor Majcen v Commission paras. 43-45.

[331] *Cf.* Commission decision in COMP IV/37.806—ENIC/UEFA, paras. 32-40.

[332] Other debated alternative measures: luxury tax; solvency mechanism; addressing overinvestment.

[333] Case C-309/99, Wouters et al. v. Algemene Raad van de Nederlandse Orde van Advocaten para. 97 and Case C-519/04 P, David Meca-Medina and Igor Majcen v Commission para. 42.

[334] Pijetlovic, K., *"Treatment of UEFA Restrictions on Breakaway Leagues in Football Under EU Law"*, EU Sports Law and Breakaway Leagues in Football, ASSER International Sports Law Series, Springer, Chapter 7, 2015, p. 281.

equal purposes. Therefore, any suggested alternative procedure need to fulfil with the principle of proportionality, thereby representing a valid less restrictive mean, contrasting to merely representing a conceivable alternative, in order for the CL&FFP regulations to be deemed disproportionate in EU law.

Currently, the principle is enshrined in EU law, and can form the basis to challenge EU policies, and Member State exercises that falls under its scope of application. The proportionality assessment comprehends three prerequisites that must be complied as for the restriction to be deemed defensible. Primary, the action must be an effective approach of achieving the identified purpose (suitability test).[335] Additional, the action must be necessary for attaining the purpose, comprising that no alternative and less restrictive means are capable of attaining the purpose (necessity test).[336] Ultimately, the limitation enforced cannot be greater than necessary to attain the purpose (proportionality test, stricto sensu).[337] With this being said, one must conclude that the greater the restriction's impact on the market, the greater the efficiencies must be. How rigorously the court will scrutinise those factors is so important as the principle of proportionality prerequisites.[338] The rigor of the proportionality analysis differs upon the circumstances of the issue at stake, once it is evaluated on a case-by-case legal perspective.[339]

The court may adopt an interpretation that is based on a lot of deference to the decision maker (UEFA, in this case), or alternatively, make a "rigorous examination and search" of the reasoning behind the thing being challenged.[340] For a court to determine the appropriate intensity, two important factors must be considered. Indeed, the nature and importance of the objective to be achieved, and the nature and importance of the interest raised by the applicant should be assessed.

Furthermore, a court will also consider the 'relative expertise, position, and overall competence of the court as against the decision-making authority in assessing those factors'.[341] The CL&FFP regulations do not seem to involve the need of a strict

---

[335] Lindholm, J., *"The Problem With Salary Caps Under European Union Law: The Case Against Financial Fair Play",* Texas Review of Entertainment & Sports Law, 12(2), 2011, p. 203.

[336] *Id*.

[337] *Ibid*.

[338] Paul Craig & Gráinne de Búrca, *"Texts, Cases, and Materials",* Oxford University Press, Sixth Edition, United States of America, 2015, p. 526.

[339] Gráinne de Búrca, "*The Principle of Proportionality and its Application"*, EC Law, Yearbook of European Law 13 (1), 1993, p. 114.

[340] *Id*., pp. 111-112.

[341] *Id*.

proportionality inquiry. Usually, this is needed where an action breaches an imperative right or community interest (e.g. a fundamental civil liberty of a person). The CL&FFP regulations simply overstep the ability to perform in a relevant market deprived of competitive restrictions.[342] However, EU law also oversteps this reasoning, and an Article of the Treaty specifically allows this, in specific contexts – Article 101(3).

In addition, the legitimate objective of the CL&FFP is not one that requests a considerable amount of deference to the governing body.[343] Following, the CL&FFP regulations appearently do not involve any area of public interest, as the stated supra. Therefore, neither of the objectives involved with the regulations undoubtedly encompasse the right intensity of a proportionality test.

Nevertheless, there are other good reasons that suggest a court should not undertake a rigorous examination of the CL&FFP regulations. UEFA might claim that regarding the specificity of sport, and UEFA's know-how in the matter, a court would turn to be quite reluctant in interfering with the upper governing body of European football. Moreover, as we have already seen in the beginning of Chpater II, Stephen Weatherill proposes that the previous judicial decisions in this subject expresses a legacy of courts demonstrating sceptical to meddle with the actions of sporting bodies.[344] Thus, confidently UEFA has better skills to establish what is the best conduct for the industry than any court. Likewise, UEFA might claim that the judicial body should not comprise a intensive test of proportionality, as the involved parties actively contributed in writing the provision and, through this talks, it is perceveid that these parties could receive several benefits.[345] It should also be reminded that the majority of the stakeholders in European football reinforced the position of UEFA Executive Committee, when the latter approved the regulations.

It seems difficult to precise the rigorousness of a proportionality test that a court might pursue. Again, Courts and experts on the field have already provided many superficially distinctive criteria of the proportionality test, depending on a case-by-case analysis. With the consultation process that took place above, this author deem to consider that a court will be

---

[342] *Ibid*., p. 148.

[343] Examples of measures that do demand such deference include those that deal with matters of public health or public security, as these are seen as important interests to protect. *See, respectively*, Case C-331/88 Fedesa and Others v Council of the European Communities E.C.R. I-4023, 1990 *and* Case C-120/94 Commission of the European Communities v Greece, E.C.R. 1513, 1996.

[344] *See*, supra note 266.

[345] G. Daniel, *"The UEFA Financial Fair Play Rules: a Difficult Balancing Act"*, ESLJ 50 9(1), 2001, p.37.

very reluctant in determining that the UEFA financial fair play mechanism is disproportionate.

2.3.1 *Suitability* test

In order to assess if a measure is adequate and appropriate to achieve its desired objectives a test, which looks at the relationship between the means and ends of the measure, is necessary. As stated above in this piece of research, there are studies and evidence that provide and indication that the CL&FFP regulations will be successful in decreasing expenses for European football clubs. Therefore, this is strictly linked to the main legitimate purpose of CL&FFP regulations, which is attaining a long-term financial sustainability within European football clubs.

Some protesters could indicate the court decision in the Case Fedesa and Others v Council of the European Communities, in order to prove the regulations' unsuitability.[346] In this case the applicants claimed that the method at stake was a fruitless and unsuitable measure because it was unmanageable to apply in practice, and it would result in the formation of a risky black market. An analogous aspect might be taken against the CL&FFP regulations. Football clubs are continuously looking for loopholes in the provisions, turning them very hard to operate. Despite these gaps in the law that let transpire some difficulties, in this author's opinion, it does not represent an argument that seems to have enough weight to be deemed 'unsuitable' by a court.

Football clubs will always seek loopholes in any regulations that UEFA operates. Only if those loopholes are so widespread as to leave the regulations generally impracticable, a court is likely to rule that the CL&FFP regulations are suitable to attain their purpose.

2.3.2 *Necessity* test

The vital question here lies on assessing whether the method is 'necessary', i.e. whether there are other less restrictive means available that are competent in attaining the same objectives.[347] The subsequent considerations will briefly introduce several possible

---

[346] Above nº 343.

[347] Jemson, T.J., 2013 *"For the Love of Money, Football, and Competition Law: An analysis whether UEFA's Financial Fair Play breach European competition law",* University of Otago, p.32.

substitutes – luxury tax; solvency mechanism; addressing overinvestment - to the CL&FFP regulations and provide how a court is expected to handle them.

A luxury tax purposes to obstruct excessive level of expenditure by taxing wage costs over a pre-determined limited value. It differs from a salary cap that stipulates an absolute level clubs must not exceed.[348] Another alternative could be the introduction of a simple solvency mechanism that European football clubs must comply. Such mechanism would comprehend, amid other things, complex criteria for clubs to comply with certain capital and liquidity levels to guarantee that the sporting industry is capable of subsisting through dissimilar economic contexts, like is operated in the banking sector.[349]

However, the devices proposed so far focus on attaining financial sustainability by implementing new financial regulation approaches on football clubs. However, a better device could be drafted by aiming on fixing behaviour, not monitoring it. The CL&FFP regulations are grounded on the principle that teams are overspending, thus, addressing investment in a different manner and scrutinising what instigates these teams to pursue such behaviour may provide the response.

It is improbable a court would deem these as a suitable alternative to the CL&FFP regulations since there does not appear to be enough proofs to determine they would fulfill UEFA's aim of long-term financial sustainability. Again, this would be a very drastic approach for a court to rule out the current CL&FFP regulations, given UEFA know-how in the field.

2.3.3 *Proportionality/(stricto sensu)* test

This analysis encompasses determining that the CL&FFP regulations might comprise the least restrictive means accessible to attain the purpose of financial sustainability, but inquiries whether these restrictive mean comprehends a disproportionate impact on the claimant's interests.[350] This inquiry will target the financial expenses the claimant will suffer because of the enforcement of the mechanism, and these impacts will be balanced against the aim that is pursued.[351]

---

[348] Helmut Dietl and others *"Welfare Effects of Salary Caps in Sports Leagues with Win-Maximizing Clubs"*, Working Paper No 08-25, Institute for Strategy and Business Economics, University of Zurich, 2008, p.12.

[349] An illustration of such a solvency test can be found in section 4 of the New Zealand Companies Act, 1993.

[350] Above 347, p.41.

[351] *Id*.

There are those who consider that the hazard in the European football industry is not relevant enough to justify the implementation of the applicant's approach. For example, in Pfizer Animal Health SA v Council of the European Communities, the claimants opposed the proportionality of a ruling that removed the approval for the use of particular additives in some products.[352] The CJEU decided that, notwithstanding its hesitation as to whether there is a strict link between the use of those antibiotics as additives and the development of resistance to them in humans, the prohibition on the feeding stuffs is not a disproportionate measure when compared with the aim pursued, vis-à-vis the defence of human health.[353]

In a parallel manner, one could argue that the danger of bankruptcy is not relevant, and in that sense the restriction on the applicant's concerns is disproportionate. This reasoning relies on the fact that notwithstanding European clubs seeming to have financial difficulties, they hardly breakdown due to them.[354] The precise financial harm that may effect would differ on who the applicant was. If it were an athlete, the argument may be grounded on the effect the regulations have on their wage. Otherwise, a football team could argue that due to the restraints they are no longer capable to act as fine as before the measure, and as a consequence have experienced a decrease in incomes.

Nevertheless, it seems improbable a court will revert the CL&FFP regulations based on this arguments. A court would also be reluctant to rule out UEFA's interests given its know-how in establishing what is advantageous for European football. In addition, a wage reduction for a player or thin decrease in income for clubs is improbable to be so disproportionate in this case to require a courts involvement. Ultimately, at this phase of the proportionality inquiry, a court will previously have ruled the procedure both necessary and suitable. Consequently, while they will still ponder this supra prerequisite, by now the chances may be set against the applicant.[355]

Following the supra study, one should determine that the CL&FFP regulations will meet the *Wouters* exception. The rules seek to attain a legitimate purpose, specifically long-term financial sustainability. Besides, the restraints rising from the CL&FFP rules appear to

---

[352] Case T-13/99 Pfizer Animal Health v Council ECR II-3305, 2002.

[353] Press and Information Division, Judgments of the Court of First Instance in Cases T-13/99 and T-70/99 *Pfizer Animal Health SA v Council and Alpharma Inc. v Council,* Press Release No 71/02, 11 September 2002.

[354] Stefan Szymanski *"Insolvency in English professional football: Irrational Exuberance or Negative Shocks?"*, Working Paper No 12-02, Department of Kinesiology, University of Michigan, 2013, pp.16-17.

[355] Long, C.R., *"Promoting Competition or Preventing it? A Competition Law Analysis of UEFA's Financial Fair Play Rules"*, 23 Marq. Sports L. Rev. 75, 2012-2013, p.96.

be inherent in the pursuit of that purpose as well as proportionate to it. Thus, the *Wouters* exemption determines that the UEFA mechanism do not restrict competition in breach of Article 101(1) TFEU. This piece of research will now reflect whether the Article 101(3) concession in the TFEU would also be fulfilled.

3. A closer look to Article 101(3) TFEU

The European football upper governing body, UEFA, might also pursue protection under Article 101(3) TFEU, which stipulates a concession to a breach of Article 101(1) TFEU. Article 101(3), in its important statements, writes that the provision in quesion is 'inapplicable' when the anticompetitive procedure at issue 'contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit (…)'.[356] Additionally, the behavior must not 'impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives' or 'afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question'.[357]

If an agreement or a behaviour that breaches Article 101(1) TFEU complies with these conditions, then it 'shall not be prohibited, no prior decision to that effect being required'.[358] These agreements 'are valid and enforceable from the moment that the conditions of (Article 101(3) of the Treaty) are satisfied and for as long as that remains the case'.[359] According to the EC's interpretation, this Article 101(3) TFEU criteria amount to an evaluation of pro and anticompetitive effects, and only the four conditions enforced by the provision are considered.[360] Each prerequisite will be separately scrutinised here to conclude whether UEFA's CL&FFP regulations would qualify for this defence.

We must also note that likewise the test established by the CJEU in *Wouters*, an anticompetitive decision can be justified – and it is possible for the CL&FFP regulations to be exempt from the anti-competitive violation of article 101(1) TFEU - if it fulfils the conditions set in TFEU Article 101(3). This provision contains four cumulative criteria that must be

---

[356] Commission Notice, Guidelines on the application of Article 81(3) of the Treaty, OJ C 101, 2004.

[357] Article 101(3) a),b) TFEU.

[358] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), OJ L 1, 4.1.2003.

[359] Commission Notice, Guidelines on the application of Article 81(3) of the Treaty, OJ C 101, 2004, paras. 97-100.

[360] *Id*.

fulfilled, with the first two demanding an affirmative answer and the former two a negative one.

The EC's interpretation in this provision is very rigorously and there are insufficient block exemptions for particular situations. Correspondingly, four conditions need to be achieved, when these do not operate: efficiency gains; fair share for consumers; indispensability of the restrictions; no elimination of competition.[361] These criteria are cumulative and all need to be consequently met for an exemption to be applicale. As mentioned before, the exclusion only operates to measures improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit. Moreover, article 101(3) requires that the measures shall be 'indispensable to the attainment of these objectives', meaning that the restraints are essential.[362] Finally, the decision must not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

The EC has provided guidance on how to operate these conditions and they will then be scrutinised in this piece of research.

[361] Commission Notice, Guidelines on the application of Article 81(3) of the Treaty, OJ C 101, 2004, para. 34.

[362] Jeppe Grunnet Mieritz & Einar Marsteen Helde, *"A legal and economic analysis of UEFA's Financial Fair Play Regulations' effect on the competition in European Football",* Copenhagen Business School, March 2014, p.38.

3.1 *Efficiency Gains*

In order to be considered as an efficiency gain, the 'restrictive agreement must contribute to improving the production or distribution of goods or to promoting technical or economic progress. The provision refers expressly only to goods, but applies by analogy to services'.[363] Additionally, each efficiency entitlement must require: (i.) The nature of the alleged efficiencies; (ii.) The bond between the agreement and the efficiencies; (iii.) The probability and impact of each claimed efficiency; and (iv.) How and when each alleged efficiency would be attained.[364]

UEFA would claim that the essence of the efficiency achieved in this context is the financial sustainability of European football.[365] The CL&FFP regulations precisely provide what football clubs can and cannot do financially, and they also provide clubs inducements to invest in the youth development sectors and related long-term investments that can assist a club in preserving its financial power in a long-term perspective. This durability is definitely an efficiency that can support the financial growth of European football, at least on theory. The bond amid this efficiency and the CL&FFP rules is concise and straight to the point. The regulations have been drafted with the legitimate objective of making sure that clubs subsist economically. The probability of the efficiency is reasonably high since the rules have already blocked many teams from expending as much as typical and they have a convincing inducement to comply so that they may join in UEFA's competitions.[366]

The impact is also expected to be widespread as the regulations operate to all European clubs who have qualified for a UEFA club competition and as several national leagues adopted the same approach, as an UEFA's extension.[367] The agenda for attaining the efficiency is visibly held in monitoring periods in the CL&FFP rules, and the purpose is to carry European clubs to financial prosperity within a certain period of time (or to enforce sanctions). It is expected that, notwithstanding some financial limitations be engaged on the clubs, the CL&FFP regulations will lead to ensure financial improvement once all teams will be more economically accountable and that the sport will flourish in a long-term perspective.

---

[363] Commission Notice, Guidelines on the application of Article 81(3) of the Treaty, OJ C 101, 2004, para. 104.

[364] *Id*., para. 105.

[365] *Ibid*., paras. 104-105.

[366] Long, C.R., *"Promoting Competition or Preventing it? A Competition Law Analysis of UEFA's Financial Fair Play Rules"*, 23 Marq. Sports L. Rev. 75, 2012-2013, p.97.

[367] Article 57(1), UEFA Club Licensing and Financial Fair Play Regulations, 2015.

For now, it looks coherent to assume that the CL&FFP regulations encompass efficiency but time will tell if this will really materialise.

3.2 *Fair Share to Consumers*

The CL&FFP regulations should also be advantageous to consumers.[368] In this case, they comprise 'all direct or indirect users of the products covered by the agreement (…)'.[369] If the CL&FFP regulations provide these consumers in a better situation than they would be without them, then this prerequisite is satisfied.[370] This is considered regarding the 'overall impact on consumers of the products within the relevant market and not the impact on individual members of this group of consumers'.[371] The goods here at stake can be several (vis-à-vis clubs for the players, players and supporters for the clubs, football for the supporters and sponsorship agreements for the backers).

Challengers of the UEFA's mechanism will argue that the CL&FFP regulations will harm the competitive balance within football leagues.[372] Therefore, it is questionable that this will diminish the value of the competition from a consumer's perception and economic research is needed to define the precise impact a reduction in competitive balance would provoke on European football industry. If this analysis suggested that a reduction in competitive balance decreases consumer interest in European football, this would be a disadvantage resulting from application of UEFA's CL&FFP regulations.[373]

Again, determining whether this prerequisite is fulfilled seems problematic when considering the existing evidence. Nevertheless, it ought to be mentioned that the party pursuing to trust on Article 101(1) TFEU - UEFA - is the one that must provide that consumers gain countervailing advantages.[374]

---

[368] Commission Notice, Guidelines on the application of Article 81(3) of the Treaty, OJ C 101, 2004, para. 102.

[369] *Id*., para. 107.

[370] *Ibid*., para. 109.

[371] *Ibid*., para. 110.

[372] Vöpel, H., 2013. *"Is Financial Fair Play really justified? An economic and legal assessment of UEFA's Financial Fair Play rules"*, Hamburgisches WeltWirtschaftsInstitut (HWWI) nº79, p. 14.

[373] Jemson, T.J., 2013 *"For the Love of Money, Football, and Competition Law: An analysis whether UEFA's Financial Fair Play breach European competition law",* University of Otago, p.45.

[374] Commission Notice, Guidelines on the application of Article 81(3) of the Treaty, OJ C 101, 2004, para. 103.

3.3 *Indispensability test*

A two-part examination needs to be applied in order to determine if the restrictions are indispensable: 'First, the restrictive agreement as such must be reasonably necessary in order to achieve the efficiencies. Secondly, the individual restrictions of competition that flow from the agreement must also be reasonably necessary for the attainment of the efficiencies'.[375]

Some analysts claim that UEFA's CL&FFP regulations are not advisably needed to prevent football clubs from accumulating losses. They argue that there are other options, already tested in other professional sports, which could work within UEFA.[376] For example, they suggest that by letting behind the transfer window system - the time period in which players' transfers can be arranged – the exaggerated salaries and financial pressure problems would be mitigated.[377]

This analysis demands a parallel inquiry to the proportionality test under the Wouters exception.[378] Conversely, the *Wouters* exception scrutinised substitute measures for attaining the same legitimate purpose of financial sustainability. The possible benefits resulting from the UEFA's mechanism are a rise in product value due to upgraded financial sustainability in European football industry. Therefore, there is a straight connection amid these efficiencies and the legitimate purpose of the provisions.

Consequently, if there are no feasible and less restrictive means of achieving financial stability, as already concluded in this piece of research, the CL&FFP regulations are considered indispensable.

3.4 *No eliminatition of competition*

This prerequisite establishes that while a measure encompasses pro-competitive gains, it cannot be at the sacrifice of the competitive process.[379] The evaluation 'requires a realistic analysis of the various sources of competition in the market, the level of competitive

---

[375] *Id.*, p. 107.

[376] Long, C.R., "*Promoting Competition or preventing it? A Competition Law Analysis of UEFA's Financial Fair Play Rules",* 23 Marq. Sports L. Rev. 75 2012-2013, p. 94.

[377] Tom Barnard and Andrew Nixon, *"Are the UEFA FFP Regulations Being Ignored?",* Thomas Eggar The Sport Lawyer, 32º ed., (Feb. 2012), retrieved from: http://www.thomaseggar.com/ebulletins/the-sport-lawyer---are-the-uefa-ffp-regulations-being-ignored- (last consulted, 16 April, 2016).

[378] *See*, supra note 259, p.152

[379] Commission Notice, Guidelines on the application of Article 81(3) of the Treaty, OJ C 101, 2004, para. 105.

constraint that they impose on the parties to the agreement and the impact of the agreement on this competitive constraint'.[380]

The likelihood of eradicating competition is substantial in this case. Teams from minor markets frequently possess smaller infrastructures and less income.[381] With the regulations in force, today the teams with better facilities, bigger sponsorships deals, and more supporters will make more income and will, consequently, have a considerable benefit concerning what they are able to expend. These intrinsic benefits are not properly anticompetitive. Instead, what eliminates competition is that the CL&FFP regulations preclude clubs with less income from spending anything beyond their revenue in order to purchase a bigger market share and invite more profit. It was already predictable that clubs with rich backers, who had previously spent loads of money before the regulations were applied, would support them. They apparently have no interest in seeing their contender's improving their sporting performance. The CL&FFP regulations fundamentally fasten clubs into their present standards of viability since they cannot expend more than their means to have more success at different levels.[382] This comprises the likelihood of eradicating many teams from some day being capable to rightfully fight with the most powerful ones for the top performers and between other on the pitch.

Moreover, even if an owner wants to invest in the club's infrastructure (e.g. a new stadium) for more income, merely the finance expenses of building a stadium can be set aside of the calculation of relevant expenses under the BE requirement enshrined in CL&FFP rules.[383] They need to 'have been expensed in a reporting period rather than capitalised as part of the cost'.[384] Nevertheless, even if they were capable of constructing an infrastructure within these limitations, they will still demand a team that general public is interested in watching compete.

Although UEFA states that the CL&FFP regulations are intended to support sporting competition, it appears probable that it will just fasten every club into its present status with small margin to advance or to move back because of limitations on expenditure. Also, due to the reach of the mechanism and thus regarding the volume of participants in UEFA targeted,

---

[380] *Id*., para. 108.

[381] Above nº376, p.99.

[382] *Id*., p.110.

[383] Annex C(1)(g), CL&FFP regulations, 2015.

[384] Annex C(1)(k) CL&FFP regulations, 2015.

the CL&FFP regulations do seem to eradicate competition ‘in respect of a substantial part of the products concerned’.

Following this interpretation, it is this author’s view, the CL&FFP regulations do not fulfil the criteria to boost the exception enshrined in Article 101(3) TFEU.

4. A mention of Article 102 TFEU

Article 102 sets a prohibition regarding abuse of market power, in one or more relevant markets, by undertakings in a dominant position that can be pursued by one undertaking (single dominance) or more (collective dominance). The reasoning of this rule is not to prohibit the purchase and existence of dominance per se, but is targeted at monitoring the unilateral conduct of a dominant undertaking(s) with market power. *Ipso modo,* three related questions must be conducted, in principle, when regulating the presence of an abuse of the dominant position.[385]

Primarily speaking, the relevant market should be defined, as already mentioned before[386], from its product, geographic and, if appropriate, temporal market.[387] The delimitation of relevant market concept is also significant in the cases related to Article 101(1) when reflecting whether an agreement takes a restrictive or distortive effect on competition. Secondly, the relevant market explanation will be useful in order to assess whether a firm(s) was dominant within that market. The definition of a dominant position is stated as a position of economic power owned by an undertaking that enables it to inhibit effective competition and being sustained on the relevant market by providing it the power to act to a considerable degree, regardless of its competitors and consumers.[388] Market power is determined under a market share basis detained by the undertaking,[389] the presence of possible contenders, barriers to entry, grade of vertical integration, specificity of the merchandise in subject, and other elements of dominance.[390] The presence of a dominant position arises from a combination of some of these aspects which, taken individually, are not necessarily convincing.[391] Firm(s) in a dominant position partake a special duty not to permit their behaviour to impair authentic and undistorted competition.[392]

---

[385] Case 27/76 United Brands v. Commission [1978] ERC 207, para 65. In this judgement, the Court held the delimitation of the dominant position concept.

[386] Relavant Market at above 5.1, p. 81.

[387] *Cf.* Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, pp. 5–13.

[388] *See*, supra note 385, paras. 65–66.

[389] In Case 27/76 United Brands a market share of 45% in combination with other factors estab- lished dominance, in Case 322/81 Michelin it was 57–65%.

[390] Commission Notice on the definition of the relevant market for the purposes of Community competition law OJ C 372, 9.12.1997, pp. 5–13, paras. 53-55. Case 62/86 AKZO v. Commission [1991] ECR I-3359.

[391] Case 27/76 United Brands v Commission [1978] E.C.R., 207, paras. 65-66.

[392] Case 322/81 Michelin [1983] E.C.R. 3461, paras. 10 and 57.

In its verdict in Piau case, the CJEU wrote about the problem of collective dominance in the sporting industry. Revisiting the previous decision in Compagnie Maritime Belge[393], it addressed that legally autonomous economic entities might be established collectively dominant 'provided that from an economic point of view they present themselves or act together on a particular market as a collective entity'.[394] Subsequently, the Court reiterated the three cumulative prerequisites for a judgement of collective dominance as presented in the Airtours decision.[395]

Enactment by the teams of a ruling such as the FIFA Players' Agents Regulations was perceived as resultant in teams being so connected - as to their behaviour - on a specific market, that they are current on that market as a collective body their participants, their dealing partners, and customers.[396] FIFA, national football bodies, and the team composing them were considered collectively dominant on the market for providing players' agents' service industries. Since the rules are mandatory for national associations that are associates of FIFA and the teams composing them, these associations seem to be connected in the long term as to their behaviour by policies that they consent and that other undertakings (namely players and players' agents) cannot breach in risk of penalties that may contribute to their preclusion from the market, particularly in players' agents cases and such a condition consequently typifies 'a collective dominant position for clubs on the market for the provision of players' agents' services, since, through the rules to which they adhere, the clubs lay down the conditions under which the services in question are provided'.[397]

FIFA is involved albeit it is not operating on the market for players' agents' services; it is enough that it comprises the willingness of the national associations and the clubs, the real economic operatives on the relevant market. FIFA acts on the market through its associates. The factor of abuse of the collective dominant position was not consequently proved in this judgement. It was not the primary assessment in which the question of collective dominance was addressed in the sporting area: in the Bosman case, Advocate General Lenz deemed that football clubs in a professional competition might be 'united by such economic links' as to be considered as collectively dominant.[398] Nevertheless, the CJEU

[393] C-396/96 P Compagnie Maritime Belge, para. 36.

[394] Case T-193/02 Laurent Piau v. Commission [2005] ECR II-0209, para. 110.

[395] *Id*., para. 111.

[396] *Ibid.,* para. 113.

[397] *Ibid.,* para 114.

[398] AG Lenz Opinion in C-415/93 Bosman, para. 285.

decided this dispute under the domestic market rules and then absent to stipulate supervision on the competition issues.

The third and ultimate question relates to the factor of abuse of the dominant position in the specified market. Illustrations of abuse are set in Article 102 TFEU in a non-extensive list. Unlike merely unilateral abuses (e.g. as predatory pricing), contractual abuses comprise implicit or explicit involvement of another undertaking (e.g. in exclusive supply agreements). Resembling Article 101(1), the component of effect on trade amid Member States is mandatory for abusive conduct to be deemed contrary to Article 102.[399] Refusal to supply is a wide notion and considers many practices with vertical and horizontal embargos, and denial to contract with current and new consumers.[400] More precisely, it considers practices refusal to grant access to so-called essential facilities[401], refusal to supply to prevent parallel trade[402], or like refusal to supply in the aftermarket[403], refusal to supply with the purpose of excluding a competitor from an ancillary market.[404]

In particular contexts it is conceivable to file a single action as an anticompetitive decision (under de aegis of Article 101 TFEU) and, at the same time, an abuse of a dominant position (in behalf of Article 102 TFEU).[405] The pyramidal structure of sport within the EU exposures the provisions and decisions of sporting bodies like UEFA to be challenged on the basis that they establish an abuse of dominant position.[406] In Europe, as the upper governing body of professional football, UEFA can perform deprived of competition concerns and consequently has a dominant position in the football marketplace.[407] It does not seem, nevertheless, as if UEFA abused that position when implementing the CL&FFP regulations. The TFEU does not encompass a clear concept of what comprises abuse, but it is usual to

---

[399] *See* Commission Notice— Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty OJ C 101, 27.4.2004, pp. 81–96. The same examination for effects on trade is enforced as in Article 101(1).

[400] Communication from the Commission— Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, OJ C 45, 24.2.2009, paras 75–90.

[401] *Cf.* Alison Jones & Brenda Sufrin, EU Competition Law, Text, Cases and Materials, Oxford University Press, Fourth edition, 2011, pp. 486-487.

[402] Cases C-468-478/06 Sot. Lelos kai Sia and others EE v. GlaxoSmithKline AEVE Farmakeftikon Proionton [2008] ECR I-7139.

[403] Case 22/78 Hugin Kassaregister v. Commission [1979] E.C.R. 1869: even where the offending undertaking is not dominant in the primary product market but only in the market for its own spare parts.

[404] Cases 6 and 7/73 Istituto Chemioterapico Italiano Spa and Commercial Solvents Corp. v. Commission [1974] E.C.R. 223.

[405] Case 66/86, Ahmed Saeed Flugreisen & Silver Line Reisebtiro GmbH v. Zentrale zur Beksmpfung unlauteren Wettbewerbs e.V., 1989 E.C.R. 803, para. 37.

[406] *Cf.* Case T-193/02, Piau v. Commission of the European Communities, 2005, E.C.R. 11-209, para.107-116 (stating that a dominant position is characterized by the market provision for players' agents' service and the rules to which they adhere).

[407] Case 85/76, Hoffimann-La Roche & Co. AG v. Commission, 1979 E.C.R. 461, paras. 38-39.

differentiate among three distinctive sorts of abusive conduct: exploitive abuse that jeopardises customers, exclusionary abuse that damages players, and reprisal abuse that penalises another stakeholder for its practices.[408]

The CL&FFP regulations do not fall under any of the standards of abuse written in the TFEU nor do they fit either classification.[409] Resembling rules that require clubs compensation from old clubs' training expenditures upon signing free agents, salary caps just harm athletes, not contenders or customers, and they do not fit into the group of people covered by Article 102 TFEU.[410]

4.1 Application of both Articles 101 and 102 TFEU

Conferring to settle case law, the two competition rules can be simultaneously enforced.[411] Previously in its early decision on Continental Can, the CJEU provided that Articles 101 and 102 TFEU pursue to accomplish the same purpose of preserving effective competition within the common market.[412] In several cases, the policy of the dominant undertaking(s) fits on the strengthening of their market power by contractual clauses means - as tying, exclusivity – and so forth.

The arrangements between two or more undertakings covering such clauses may produce or strengthen a situation of dominance that is, or may become, element to abuse. Such arrangements can be contrary with both, Articles 101 and 102 TFEU. If the situation comprises an implicit collusion in an oligopolistic market then just Article 102 operates, and if the collusion is obvious than Article 101 will operate simultaneously. The behaviour rising from the positions of restrictive arrangements between the undertakings comprising a single economic entity is deemed autonomous and not collusive so Article 102 only will be relevant, but just if the firm(s) affected are dominant on the relevant market. Regularity held that Article 101(3) should be understood as excluding any use of this exception to restrictive agreements that form an abuse of a dominant position. Instead, an enterprise, which holds a

---

[408] *See*, Richard Wish & David Bailey, Competition Law, Oxford University Press, 7th edition, 2012, Chpater 5, pp. 173-214.

[409] Article 102 TFEU.

[410] Advocate General Lenz' opinion in Case C-415/93, URBSFA v. Bosman, 1995 E.C.R. 1-4921, para.286.

[411] *Cf.,* Case 85/76 Hoffmann-La Roche [1979] E.C.R. 461, para. 116.

[412] Case 6/72 Europemballage Corporation and Continental Can Company Inc. v. Commission [1973] ECR 215, para 11. See also Case T-51/89 Tetra Pack Rausing SA v. Commission [1990] E.C.R. II-309.

dominant position, might benefit from an exception under Article 101(3) TFEU when its criteria are met.[413]

In decisions in the sporting context like in the Piau case, the CJEU considered that if the behaviour of a dominant company fulfils all the criteria of Article 101(3) such behaviour should not be deemed as an abuse under Article 102 TFEU.[414]

One should argue that the requisite of dominance is the single distinction concerning Articles 101 and 102 when it regards to vertical contractual restraints comprising a dominant undertaking. Consequently, as the present separation of workforces between Articles 101 and 102, it is challenging to support from a legal and economic analysis, the suggestion that leaving Article 102 and trusting solely on Article 101 would be a reasonable resolution, which would create many pros, while encompassing an actual reform of Article 102 without carrying out explicit disagreement with existing standards.[415]

[413] Commission Notice Guidelines on the application of Article 81(3) of the Treaty, OJ C 101, 2004, pp. 97–118, para. 106.

[414] Case T-193/02 Piau, para 119.

[415] Rousseva E., (2005), *"Modernising by eradicating: how the commission's new approach to Article 81 EC dispenses with the need to apply Article 82 EC to vertical restraints" in* Common Market Law Rev 42 p. 590.

5. Conclusions

Every well performing football club becomes rapidly expensive, but not every costly team performs well. This takes us to the subject of this thesis - financial sustainability - what is indeed not only one, but the key success factor for professional football competitions – and, therefore, it is the crucial element of UEFA's Club Licensing and Financial Fair Play regulations. Through this research, we study that, all over the world, most of clubs' executives tend to operate imprudently and tend to overvalue their chances in the competitions. This may result in disproportionate expenditure relative to the income some clubs generate, as delays in honoring debts occur frequently in many leagues. Consequently, club financial practices have somehow to be monitored and it is recommended, in order to achieve this, an adequate licensing system and financial fair play regulations.

My purpose, with this paper, is to outline the strong link between financial health as a key factor of success of a competition and a strict and elaborate licensing system, constantly subject to continuous improvement. Some may continue arguing that enforcing UEFA's concept would simply mean that smaller teams are unable to catch up the most powerful clubs, but it does not seem consistent. Better management tools or ideas will always help clubs to compensate for less ability in other areas. But the fair play concept encompasses that nobody can buy success only through his 'deep pockets'. Only if the club's financial performance - which precisely reflects the drawing potential of a club and thus its achievements - is strictly regulated, and these respective rules are interpreted as a purely sporting rule, what they really are, the leagues and other governing bodies like UEFA can control the immense cash injections and heavy borrowing which brought all the problems and financial difficulties to the industry. The assumptions and equations are made, but are not properly implemented and their enforcement is a chore.

This thesis aims at defining whether UEFA's CL&FFP regulations would contravene European competition law. Despite the provisions evidently restricting competition, this paper illustrates that they attain a legitimate goal that no other less restrictive measures could possibly achieve. Following, the answer is that, probably, the regulations issued by UEFA do not breach EU law. The first chapter refers to the rationale behind CL&FFP regulations, why UEFA wanted to implement them, and introduces their legal framework. Chapter Two analyses whether the CL&FFP regulations can be challegend under EU law when introduced the 'salary cap' and the 'third-party ownership' concepts. After studying that, it analysed whether the regulations are apparent in breach of the elements of Article 45 and, mainly, of

Article 101(1) of the Treaty. It is concluded that UEFA constitutes an association of undertakings and that the CL&FFP rules comprise a decision of that association. In addition, it is concluded that the CL&FFP regulations will affect trade between member states in an apprecible way. It is also assessed whether they possibly comprise a restriction of competition as their object and, even if a court did not rule that this was their main objective, the CL&FFP mechanism would have the effect of restricting competition. The final chapter encompasses the legal analysis by outlining whether there are any possible justifications that would preclude the infringment of Article 101(1). The Wouters exception would most probably be activated and found the restriction of competition held in Chapter Two to be compatible with the market. This is because that restriction of competition complies with every criteria set in the judicially created exemption. This chapter also presents that a legal dispute under Article 102 TFEU would not be fruitful, as UEFA did not constitute an abuse of dominant position when enforced the mechanism.

To conclude, this research establishes that the CL&FFP regulations are welcome, but, inevitably, the ultimate verdict lies with the judicial procedure. Nevertheless, there are other factors that might preclude the assessment of the provisions as the contractual bound between the European football upper governing body - UEFA - and its members; the predetermined duty to arbitrate at the clear ban of appeal to the European courts; the tacit and explicit agreement of the members under UEFA's control and the support vindicated by the EC.

References

Books / Doctrine / Review

Alison Jones & Brenda Sufrin, EU Competition Law, Text, Cases and Materials, Oxford University Press, Fourth edition, 2011

Anheier, H.K., Nonprofit Organizations: Theory, Management and Policy, Routledge, London, 2005.

Ari Nissim, "*The Trading Game: NFL Free Agency, the Salary Cap, and a Proposal for Greater Trading Flexibility"*, Sports Lawyers Journal 11/257, 2004.

Blair Downey, *"The Bosman Ruling: European Soccer – Above the Law?"* 1 ASPER Rev. Int'L. Bus. & Trade L.187, 2001.

Bogusz B., Cygan A., Szyszczak E., *"Is sport special?"*, The regulation of sport in the European Union, Edward Elgar, UK, 2007.

Borland J., *"The production of professional team sports", in* Andreff W., Szymanski S. (eds) Handbook on the economics of sport. Edward Elgar, Cheltenham, 2009.

Christopher D. Cameron & J. Michael Echevarria, *"The Ploys of Summer: Antitrust, Industrial Distrust, and the Case against a Salary Cap for Major League Baseball"*, Florida State University Law Review 22/827, 1995.

Clifford J. Hendel Partner Araoz & Rueda Abogados, "*Regulations: Málaga CF v. UEFA: lessons for financial fair play",* World Sports Law Report, Volume: 11, Issue: 12, 2013.

Cooper, D.J. and Sherer, M.J., "*The value of corporate accounting reports: arguments for a political economy of accounting"*, Accounting, Organizations and Society, Vol. 9 nº3, 1984.

Daspin, D. Albert, *"Of Hoops, Labor Dupes and Antitrust Ally-Oops: Fouling Out the Salary Cap",* Indiana Law Journal: Vol. 62 Issue nº 1, Article 6, 1998.

Daumann, F., *"Kooperenz im Sportmanagement",* Sportwissenschaft, 33 (3), 2003.

Davies, C., *"The Financial Crisis in the English Premier League: is a Salary Cap the Answer?",* European Competition Law Review, 31 (11), 2010,

Domingos Amaral, *"TPO's; de parceiros estratégicos a acionistas dos clubes?"* in Direito do Desporto, Newsletter nº3, Morais Leitão, Galvão Teles, Soares da Silva, Law Firm, 2014.

Duval, A. & Mataija, M., *"European Football Governance – Looking Backward, Looking Forward",* European University Institute, Global Governance Programme, Issue 03/2013.

Egon Franck, *"Financial Fair Play in European Club Football – What is it all about?",* University of Zurich, Department of Business Administration, UZH Business Working Paper No. 328, 2014.

Flanagan, C.A. et al., *"A tricky European fixture: an assessment of UEFA's Financial Fair Play regulations and their compatibility with EU law",* The International Sports Law Journal, 13(3), 2013.

Friedl Weiss and Clemens Kaupa, European Union Internal Market Law, Cambridge University Press, 2014.

G. Daniel, *"The UEFA Financial Fair Play Rules: a Difficult Balancing Act",* ESLJ 50 9(1), 2001.

Gammelsæter, H., *"Institutional pluralism and governance in 'commercialized' sport clubs",* European Sport Management Quarterly, Vol. 10 nº5, 2010.

Giorgio Monti, *'Article 81 EC and Public Policy'*, Common Market Law Review 39, Issue 5, 2002.

Gráinne de Búrca, "*The Principle of Proportionality and its Application"*, EC Law, Yearbook of European Law 13 (1), 1993.

Hall, S., Szymanski, S. and Zimbalist, A. S., *"Testing causality between team performance and payroll—The cases of Major League Baseball and English soccer",* Journal of Sports Economics, 3, 2002.

Hampus Rikardsson & Linus Rikardsson, "*Strategic Management in Football – How the European top club could adjust to UEFA financial fair play and simultaneously create conditions for competitive advantage within the changing UEFA football industry",* Linköping University, Department of Management and Engineering, Business Administration, 2013.

Helmut Dietl and others, "*Welfare Effects of Salary Caps in Sports Leagues with Win-Maximizing Clubs"*, Working Paper No 08-25, Institute for Strategy and Business Economics, University of Zurich, 2008.

Helmut Dietl et al., *"The Effect of Luxury Taxes on Competitive Balance, Club Profits, and Social Welfare in Sports Leagues",* Inst. for Strategy and Business and Economics, University of Zurich, Working Paper No. 91, 2009.

Hines, R. "*Financial accounting: in communicating reality, we construct reality"*, Accounting, Organisations and Society, Vol. 13 No. 3., 1988.

J. Christian et al., "*The Financial Fair Play Regulations of UEFA: An adequate Concept to Ensure the Long-Term Viability and Sustainability of European Club Football?",* International Journal of Sport Finance, Vol 7, nº2, West Virginia University, 2012.

Jeffrey Levine, *"The Legality and Efficacy of the National Basketball Association Salary Cap",* 11 Cardozo Arts & Ent. L. J. 71, 1992.

Jemson, T.J., *"For the Love of Money, Football, and Competition Law: An analysis whether UEFA's Financial Fair Play breach European competition law",* University of Otago, 2013.

Jeppe Grunnet Mieritz & Einar Marsteen Helde, *"A legal and economic analysis of UEFA's Financial Fair Play Regulations' effect on the competition in European Football",* Copenhagen Business School, March 2014.

Joanna Goyder and Albertina Albors-Llorens Goyder's, EC Competition Law (5th ed, Oxford University Press, New York, 2009).

Kesenne, S., *"The salary cap proposal of the G-14 in European football",* Econimcs Department, University of Antwerp, B-2000.

Leanne O'Leary, *"Price-fixing Between Horizontal Competitors in the English Super League"* (2008 ISLJ 77) *in* International Sports Law Journal 2008/3-4.

Lenk, H., *"Sport von Kopf bis Fuß(ball)".* Lit Verlag Dr. Hopf, Berlin, 2010.

Lindholm, J., *"Can I please have a slice of Ronaldo? The legality of FIFA's ban on third-party ownership under European union law".* The International Sports Law Journal, 15(3), 2015.

Lindholm, J., *"The Problem With Salary Caps Under European Union Law: The Case Against Financial Fair Play*", Texas Review of Entertainment & Sports Law, 12(2), 2011.

Long, C.R., *"Promoting Competition or Preventing it? A Competition Law Analysis of UEFA's Financial Fair Play Rules"*, 23 Marq. Sports L. Rev. 75, 2012-2013

Madden, P., *"Welfare economics of "Financial Fair Play"* in a sports league with benefactor owners, forthcoming in: Journal of Sports Economics Journal 2015, Vol. 16 nº2, 2011.

Matthew Piehl, *"Double Play: How Major League Baseball Can Fix the Amateur Draft and International Player Acquisition with One Swing",* Willamette Sports Law Journal, 2010.

Maxcy, J. et. al., *"The American View on Financial Fair Play"* Philadelphia, Pennsylvania, USA, ESEA Conference Volume Oxford, UK, Peter Lang International Academic Publishers, 2014.

Morrow, S., Football club financial reporting: *"Time for a new model?" Sport, Business and Management: An International Journal*, 3(4), 2013.

Oskar Van Maren*, "The Brussels Court judgment on Financial Fair Play: a futile attempt to pull off a Bosman. By Ben Van Rompuy",* Asser International Sports Law Blog, Asser Institute (6, July, 2015).

Paul Craig & Gráinne de Búrca, *"Texts, Cases, and Materials",* Oxford University Press, Sixth Edition, United States of America, 2015.

Peeters, T., Szymanski, S., "*Vertical restraints in soccer: Financial Fair Play and the English Premier League",* Research Paper nº 028/2012, University of Antwerp, Rottenberg, 2012.

Pijetlovic, K., *"The Sporting Industry"*, EU Sports Law and Breakaway Leagues in Football, ASSER International Sports Law Series, Springer, Chapter 2, 2015.

Pijetlovic, K., *"EU Competition Law and Sport"*, EU Sports Law and Breakaway Leagues in Football, ASSER International Sports Law Series, Springer, Chapter 5, 2015.

Pijetlovic, K., *"Treatment of UEFA Restrictions on Breakaway Leagues in Football Under EU Law"*, EU Sports Law and Breakaway Leagues in Football, ASSER International Sports Law Series, Springer, Chapter 7, 2015.

Richard Wish & David Bailey, Competition Law, Oxford University Press, 7th edition, 2012

Rick J. Lopez, Comment, *"Signing Bonus Skimming and a Premature Call for a Global Draft in Major League Baseball",* 41 Ariz. St. L.J, 2009.

Rousseva E., (2005), *"Modernising by eradicating: how the commission's new approach to Article 81 EC dispenses with the need to apply Article 82 EC to vertical restraints" in* Common Market Law Rev 42, 2005.

S. Weatherill, European Sports Law, ASSER International Sports Law Series, Collected Papers, 2nd Edition Springer, 2014.

Sass, M., *"Long-term Competitive Balance under UEFA Financial Fair Play Regulations"*, Working Paper No. 5/2012, Otto von Guericke, University Magdeburg, 2012.

Schubert, M. & Könecke, T., *"'Classical' doping, financial doping and beyond: UEFA's financial fair play as a policy of anti-doping."* International Journal of Sport Policy and Politics, 6940, 2014.

Scott K. Foraker, "The National Basketball Association Salary Cap: an Antritrust Violation?" 59 S. Cal. L. Rev. 157, 1985.

Siekmann R., *"Is sport 'special' in EU law and policy"*, Future of sports law in the European Union: beyond the EU Reform Treaty and White Paper. Blanpain R., Hendrickx F., Colucci M (eds), Kluwer Law International, 2008.

Simmons, R., & Forrest, D., *"Buying success: Team performance and wage bills in U.S. and European sports leagues."* In R. Fort & J. Fizel (Eds.), International sports economics comparisons, pp. 123–140). Westport, CT: Greenwood Publishing, 2004.

Simon Kuiper & Stefan Szimansky, *"Soccernomics",* Harper Sport, 2012.

Smits, J.M., *"What is legal doctrine? On the Aims and Methods of Legal-Dogmatic Research",* Maastricht European Private Law Institute, Working paper nº 2015/06, 2015.

Stefan Szymanski *"Insolvency in English professional football: Irrational Exuberance or Negative Shocks?"*, Working Paper No 12-02, Department of Kinesiology, University of Michigan, 2013.

Stephen Ross, *"Player Restraints and Competition Law Throughout the World",* Marquett Sports Law Review Vol. 15 nº49, 2004.

Stix-Hackl C., Egger A.,*"Sports and competition law: a never-ending story?" in* European Competition Law Review 23, 2002.

Vagelis Alexandrakis, *"The Sporting Exception in the EC free movement rules",* Revista de Estudos de Gestão, Jurídicos e Financeiros, 1st Year, Ed. nº 03 (Jul./Sep. 2010).

Van Maren, O. et al., *"Debating FIFA's TPO ban: ASSER International Sports Law Blog symposium"*. The International Sports Law Journal, 15(3), 2015.

Vöpel, H., "*Do we really need financial fair play in European Club Football? An Economic Analysis"*, CESIfo DICE Report, 2011.

Vöpel, H., *"Is Financial Fair Play really justified? An economic and legal assessment of UEFA's Financial Fair Play rules"*, Hamburgisches WeltWirtschaftsInstitut (HWWI) nº79, 2013.

UEFA/ FIFA publications

Communications, *"Finanical Fair Play Media Information"*, 25 January 2012.

FIFA, Regulations on the Status and Transfer of Players, 2015.

Karl-Heinz Rummenigge, EU Conference in Licensing Systems for Competitions, Introductory Speeches, Brussels (17 and 18 September 2009).

Khan, J., EU Conference on Licensing Systems for Club Competitions, Draft Presentation, representing English football clubs, 2009.

Procedural Rules Governing the UEFA Club Financial Control Body, 2012.

Rules of Procedure of the UEFA Congress Regulations governing the Implementation of the UEFA Statutes (2014 Edition).

The European Club Licensing Benchmarking Report Financial Year 2011.

UEFA Club Licensing Report, "*Here to Stay",* (2004-2008).

UEFA, *'Licensed to thrill'*, Benchmarking Reporto n the clubs qualified and licensed to compete in the UEFA competition season 2013/2014.

UEFA, *'The European Club Footballing Landscape'*, Club Licensing Report, Financial Year 2014.

UEFA, Club Licensing and Financial Fair Play Regulations (2015).

EU Legislation

Commission Communication on Developing European Dimension in Sport, 2011.

Commission Notice on agreements of minor importance, which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis) [2001] OJ C368/07.

Commission Notice on the definition of relevant market for the purposes of EC competition law, OJ C 372, 9.12.1997.

Commission of The European Communities, "White Paper on Sport", Accompanying document to the White Paper on Sport. (11, July 2007).

Commission Press Release, 37806 ENIC/UEFA, IP/02/942, 27 June 2002.

Commission, The EU and Sport: Background and Context, Accompanying Document to the White Paper on Sport. SEC (2007) 935.

Communication from the Commission - Guidelines on the application of Article 81(3) of the Treaty [Official Journal No C 101 of 27.4.2004].

Communication from the Commission— Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, OJ C 45, 24.2.2009.

Community competition law OJ C 372, 9.12.1997.

Council of Europe Europe Parliamentary Assembly Comittee on Culture, Science, Education and Media, Good Governance and Ethics in Sport (Provisional Report, 2012),

Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), OJ L 1, 4.1.2003.

E.U. Conference on Licensing Systems for Club Competitions, Sep. 2009, Background Paper 2.

European Commission & UEFA, "Joint Statement", issued by Vice-President Joaquín Almunia and President Michel Platini. (21, March 2012).

European Commission Memo on Antitrust: Commission adopts revised safe harbours for minor agreements ("De Minimis Notice") and provides guidance on "by object" restrictions of competition - Frequently asked questions (Brussels, 25 June 2014).

European Commission Press Release Database, Antitrust: Commission adopts revised competition rules for vertical agreements: frequently asked questions, Brussels, 20 April 2010.

European Commission Staff Working Document, *"Sport and Free Movement"*, Accompanying document to the communication from the commission to the European Parliament, the Council the European Economic and Social Committee and the Committee of the Regions, Developing the European Dimension of Sport, 66/2, 2011).

FIFA, Circular no. 1464, Zurich, 22 December 2014.

Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty [2004] OJ C101/8.

The Lugano Convention harmonized the rules on jurisdiction - in civil and commercial matters - and expanded the applicability of the Brussels I regulation (Council Regulation 44/2001).

Press and Information Division, Judgments of the Court of First Instance in Cases T-13/99 and T-70/99 *Pfizer Animal Health SA v Council and Alpharma Inc. v Council,* Press Release No 71/02, 11 September 2002.

Treaty on the Functioning of the European Union.

The EU and Sports Matching Expectations*,* "*Sport Governance in Europe",* White Paper Consultation by Commissioner Figel with European Sport Federations, Brussels, 20, Sept. 2006.

Internet Resources

About UEFA, UEFA.COM, http://www.uefa.org/about-uefa/index.html (last updated July. 3, 2014).

Andrew Smith, *"Financial Fair Play and the Striani complaint: Where are we now?"*, LawInSport, available at: http://www.lawinsport.com/articles/item/financial-fair-play-and-the-striani-complaint-where-are-we-now#references (17, February 2015).

Antoine Duval, *"EU Law is not enough: Why FIFA's TPO ban survived its first challenge before the Brussels Court",* Asser International Sports Law Blog, reteieved from: http://www.asser.nl/SportsLaw/Blog/post/eu-law-is-not-enough-why-fifa-s-tpo-ban-survived-before-the-brussels-court1 (25 Aug 2015).

Associated Press, *'PSG fans suing over UEFA's financial fair play rule'*, ESPNFC, retrieved from: http://www.espnfc.com/paris-saint-germain/story/2260651/psg-fans-suing-over-uefas-financial-fair-play-rule (23 January, 2015).

David Conn, The Guardian, *"Everything you need to know about Gianni Infantino"*, available at: http://www.theguardian.com/football/2016/feb/26/gianni-infantino-fifa-president, (last visited, 26 Feb, 2016).

Frédérique Faut, Giandonato Marino and Oskar van Maren, *"Five Years UEFA Club Licensing Benchmarking Report – A Report on the Reports"*, ASSER International Sports Law Blog (25 April, 2014) retrived from: http://www.asser.nl/SportsLaw/Blog/post/five-years-uefa-club-licensing-benchmarking-report-a-report-on-the-reports-by-frederique-faut-giandonato-marino-and-oskar-van-maren (last consulted, 16 Jan, 2016).

FT View, *"A level playing field beneficts football's elite'*, Financial Times, retrieved from: http://www.ft.com/cms/s/0/e7259964-008b-11e5-b91e-00144feabdc0.html#ixzz44JAUiMc5 (24, May, 2015).

Gibson O., 2012, *"Chelsea record their first profit of the Roman Abramovich era",* The Guardian online, available at: http://www.guardian.co.uk/football/2012/nov/09/chelsea-record-profit-roman-abramovich-era.

Graham Spiers, *"How the mighty Glasgow Rangers have fallen",* The Guardian, available at: http://www.theguardian.com/football/2015/jan/18/how-the-mighty-glasgow-rangers-have-fallen. *"* (January 18, 2015)

Hamish Mackay, "The Mirror", "*Champions League Prize money 2014/15 – see how much your club earned last season",* electronic available at: http://www.mirror.co.uk/sport/football/news/champions-league-prize-money-201415-6680392 (last updated, 22 Oct. 2015).

Herbert I (2011) *"City seal sponsorship deal worth £400 million with Etihad",* The Independent (9 July 2011), http://www.independent.co.uk/sport/football/premier-league/city-seal-sponsorship-deal-worth- 400m-with-etihad-2309387.html. (last accessed 12, March, 2016).

Juan D. C. Pérez, *"El Fair Play Financiero En El Fútbol: El Caso del Real Mallorca Y Su Exclusión de la UEFA Europa League de la Temporada 2010-2011*" available at:

http://www.ruizcrespo.com/wp-content/uploads/2012/07/18-articulo%20austral-fair-play-financiero.pdf (last consulted 22, Mar, 2016).

Majithia P. (2014) "Third party ownership—a Brazilian perspective", LawInSport, at http://www.lawinsport.com/articles/employment- law/item/third-party-ownership-a-brazilian-perspective (31 March 2014).

Mark Ogden, The Guardian, "*Paris Saint-Germain sponsorship deal eclipses all rivals but opens questions about Financial Fair Play regulations",* electronic available at: http://www.telegraph.co.uk/sport/football/european/10443730/Paris-Saint-Germain-sponsorship-deal-eclipses-all-rivals-but-opens-questions-about-Financial-Fair-Play-regulations.html (last updated, 12 Nov 2013).

Matt Slater, *"Michel Platini: UEFA to 'ease' financial fair play rules"* , BBC Sport, Football, electronic available at: http://www.bbc.com/sport/football/32784375, (18 May 2015).

Michael Bertin, "*The Strange Story Behind Falcao's Blockbuster Move to Monaco",* (3, June, 2013), electronic available at: http://grantland.com/the-triangle/the-strange-story-behind-falcaos-blockbuster-move-to-moncao/.

Monte Burke, *"The Richest sporting events in the world"*, Forbes, The Litlle Book of Billionaire Secrets, *"How to turn $20k into $20 million in 12 years or $1,2m in 30 years*", electronic available at: http://www.forbes.com/pictures/mme45efhm/uefa-champions-league/. (last visited 19, Feb, 2016).

Pritha Sarkar and Iain Rogers, REUTERS, *"UPDATE1 – Soccer Mallorca to appeal European exclusion at CAS",* electronic available at: http://www.reuters.com/article/soccer-europa-mallorca-idUKLDE66R23E20100730 , (last updated: 30, Jul, 2010).

Reuters (2015) *"Platini delighted soccer's 'modern-day slavery' is ending",* retrieved from: http://in.reuters.com/article/2015/03/16/soccer-platini-tpo-idINKBN0MC1B220150316, (16 March 2015).

Rob Draper, "*A league of their own: inside FC Barcelona's football academy, churning out future Messis...for free",* Daily Mail, electronic available at: www.dailymail.co.uk/home/moslive/article-1265747/Inside-FC-Barcelonas-football-academy-churning-future-Messis--free.html (17 April 2010).

Ryan J. Bailey, *Featured Colomunist,* Bleacher Report,"*Ranking the 10 Richest Football Owners inthe Forbes Billionaire Rich List",* available at: http://bleacherreport.com/articles/1980581-ranking-the-10-richest-football-owners-in-the-forbes-billionaire-rich-list/page/11 (last updated 4, March, 2014)

Sport Business International, *"Uefa eases FFP regulations",* available at: http://www.sportbusiness.com/sport-news/uefa-eases-ffp-regulations (30, June 2015).

Squeet *in* "*Salary/Payroll Cap the Most Complicated Thing in the NHL"*, LEAFSPACE (Aug. 2010), retrieved from: http://media.fans.mapleleafs.nhl.com/_8-SalaryPayroll-Cap-the-most-Complicated-thing-in-the- nhl/blog/2519175/122856.html.

The Swiss Ramble Blog, "*Manchester City - I Threw A Brick Through A Window"* electronic available at: http://swissramble.blogspot.pt/2015/09/manchester-city-i-threw-brick-through.html (las updated September 8, 2015).

Tom Barnard and Andrew Nixon, *"Are the UEFA FFP Regulations Being Ignored?",* Thomas Eggar The Sport Lawyer, 32º ed., (Feb. 2012), retrieved from: http://www.thomaseggar.com/ebulletins/the-sport-lawyer---are-the-uefa-ffp-regulations-being-ignored- (last consulted, 16 April, 2016).

Tom Serby of Anglia Ruskin University Law School, Cambridge, United Kingdom, The International Resource to the Taxation of Sportsmen and Sportswomen, *in* Free, Sports and Taxation, available at: http://www.sportsandtaxation.com (1, Jul 2015).

Totalsportek2, *"UEFA Champions League Prize Money 2016 Breakdown",* electronic available available at: http://www.totalsportek.com/money/uefa-champions-league-prize-money (27, Jan, 2016).

UEFA, *"Seventh club licensing benchmarking report",* Protecting the game, 21 October 2015, retrieved from: http://www.uefa.org/protecting-the-game/club-licensing-and-financial-fair-play/news/newsid=2295968.html. (last consulted 16 Jan, 2016).

UEFA, *"Seventh club licensing benchmarking report",* Protecting the game, 21 October 2015, retrieved from: http://www.uefa.org/protecting-the-game/club-licensing-and-financial-fair-play/news/newsid=2295968.html. (last consulted 16 Jan, 2016).

UEFA, *"UEFA Champion League revenue distribution",* retrieved from: http://www.uefa.com/uefachampionsleague/news/newsid=1858497.html (last updated, 31 May 2015).

UEFA, Disciplinary, available at: http://www.uefa.org/disciplinary/news/newsid=1509489.html (last updated, 11 May, 2014).

UEFA, European football's governing body*,* UEFA.com, available at: http://www.uefa.org./about-uefa/history/index.html (last updated July. 15, 2015).

UEFA*, Executive Comitte,* UEFA.COM, http://www.uefa.com/uefa/aboutuefa/executive-committee/index.html (last upadated 2 Feb 2016).

UEFA, Financial Fair Play, electronic available at: http://www.uefa.org/protecting-the-game/club-licensing-and-financial-fair-play/index.html (last updated 1, July, 2015).

UEFA, Settlement agreements: details, electronic available at: http://www.uefa.org/protecting-the-game/club-licensing-and-financial-fair-play/news/newsid=2244685.html, (last updated, 08 May, 2015).

UEFA, *Uefa Competitions,* electronic available at: http://www.uefa.org/documentlibrary/competitions/ (last visited 19, Feb, 2016

Weatheril S., *"The legally ambiguous status of 'Financial Fair Play'",* published at the website "Soccernomics", available at http://www.soccernomics-agency.com/?p=469.

Wilson, J., The Telegraph (online), *"Arsene Wenger accuses Mancherter City and Real Madrid of 'financial doping'"*, at http://www.telegraph.co.uk/sport/football/teams/arsenal/5985204/Arsene-Wenger-accuses-Manchester-City-and-Real-Madrid-of-financial-doping.html (07 Aug 2009, last visited 13, March, 2016).

Case Law

Advocate General Lenz' opinion in Case C-415/93, URBSFA v. Bosman, 1995 E.C.R. 1-4921

C-191/97 Christelle Deliège v. Ligue francophone de judo et. al., E.C.R. 2000 I-2549.

CAS 98/200 A.E.K Athens and S.K. Slavia Prague/UEFA (Court of Arbitration for Sport, 20 August 1999).

Case 13-76, Gaetano Donà v Mario Mantero, Judgment of the Court of 14 July 1976, E.C.R. 1976:115.

Case 175/78, Regina v. Ann Saunders, 1979 E.C.R. 1129.

Case 22/78 Hugin Kassaregister v. Commission [1979] E.C.R. 1869.

Case 27/76 United Brands v. Commission [1978] ERC 207.

Case 322/81 Michelin [1983] E.C.R. 3461.

Case 36-74, B.N.O. Walrave and L.J.N. Koch v Association Union cycliste Internationale, Koninklijke Nederlandsche Wielren Unie and Federación Española Ciclismo, Judgment of the Court of 12 December 1974, E.C.R. 1974:140.

Case 37576 UEFA's Broadcasting Regulations OJ L171/12, 2001.

Case 56/65 Société Technique Minière v Maschinenbau Ulm [1966] E.C.R. 234.

Case 62/86 AKZO v. Commission [1991] ECR I-3359.

Case 85/76, Hoffimann-La Roche & Co. AG v. Commission, 1979 E.C.R. 461.

Case American Needle Inc v National Football League 560 US 183 (2010).

Case C-120/94 Commission of the European Communities v Greece, E.C.R. 1513, 1996.

Case C-176/96, Lehtonen v. Fédération Royale Beige des Sociétés de Basketball ASBL, E.C.R. 2000:201.

Case C-2013/A/3067 , Málaga CF SAD v. UEFA, arbitral award of 08 October 2013.

Case C-226/11 Expedia Inc. v Autorité de la concurrence and Others, E.C.R. 2012:795.

Case C-299/15, Daniele Striani et. al. v Union européenne des Sociétés de Football Association (UEFA), Union Royale Belge des Sociétés de Football – Association (URBSFA), 16 Jul 2015.

Case C-325/08, Olympique Lyonnaise v. Bernard & Newcastle Utd E.C.R. 2010:143, judgement of 16 March 2010.

Case C-331/88 Fedesa and others v Council of the European Communities E.C.R. I-4023, 1990.

Case C-352/13, Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Akzo Nobel NV and Others, E.C.R 2015:335.

Case C-391-95, Van Uden Maritime BV, trading as Van Uden Africa Line v Kommanditgesellschaft in Firma Deco-Line and Another, E.C.R. 1998:543.

Case C-41/90 Klaus Höfner and Fritz Elser v Macrotron (1991) E.C.R I-1979.

Case C-415/93, Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club Liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman, Judgment of the Court of 15 December 1995, E.C.R. 1995:463.

Case C-519/04 P, David Meca-Medina and Igor Majcen v Commission of the European Communities, Judgment of the Court (Third Chamber) of 18 July 2006, E.C.R 2006:492.

Case C-55/94, Reinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano E.C.R. I-4165, 1995.

Case C-73- 95P Viho Europe v Commission [1996] E.C.R. I-5457.

Case CAS 98/200 AEK Athens and Slavia Prague v. UEFA of 20 August 1999.

Case COMP/E3/36.85—Lille/UEFA [1999] unpublished decision of 3 December 1999.

Case IV/36.888—1998 Football World Cup [2000] OJ 2000 L 5/55.

Case IV/400 Agreement between European Glass Manufacturers, OJ L160/1, 1974.

Case T-148/89 Trefilunion v Commission of the European Communities E.C.R II-1063, 1995.

Case T-193/02 Laurent Piau v. Commission [2005] ECR II-0209.

Case T-51/89 Tetra Pack Rausing SA v. Commission [1990] E.C.R. II-309

Case T-7/89, SA Hercules Chem. NV v. Commission, [1991] E.C.R. II-1711.

Case T-13/99 Pfizer Animal Health v Council, E.C.R. II-3305, 2002.

Cases 6 and 7/73 Istituto Chemioterapico Italiano Spa and Commercial Solvents Corp. v. Commission [1974] E.C.R. 223.

Commission Decision Case COMP/C.2-37.398, Joint selling of the commercial rights of the UEFA Champions League of 23 July 2003.

John Mackey et al., Appellees, v. National Football League et al., Appellants, 543 F.2d 606 (8th Cir.1976).

Tribunal de première instance francophone de Bruxelles, Section Civile, 2013/11524/A.

Others

Deloitte Report, Top of the table, "*Football Money League*", Sports Business Group, 2016.

KEA-CDES Report, *"The economic and legal aspects of transfers of players*", 2013.

RFL Operational Rules § E1.9.3.4; Section E1 – Super League Salary Cap Regulations, Issue 10, February 2012.